

EXHIBIT DD 14

AFFIDAVIT & ANNEXURE

OF

**SIZAKELE PETUNIA
MZIMELA**



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

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**IN THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE
CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING
ORGANS OF STATE**

AFFIDAVIT

I, the undersigned,

SIZAKELE PETUNIA MZIMELA

do hereby state under oath:

Introduction

1. I am an adult female and living in Cornwall Hill, Irene.
2. The facts contained in this affidavit are within my personal knowledge and belief, both true and correct, unless the context indicates otherwise.
3. I have been requested by the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State ("the Commission") to assist in its investigations in accordance with its terms of reference.. My contribution will relate to my tenure as a South African Airways ("**SAA**") employee in the role of SAA Group Chief Executive Officer.

SPM

This statement is made to the best of my limited recollection of events, exact timelines and dates.

Employment History:

- Interim Chief Executive Officer, South African Express Airways, 1 August 2018 – current
- Ministerial Task Team member, South African Express Airways, June 2018 – July 2018
- Chief Executive Officer, Fly Blue Crane (Pty) Ltd, March 2015 – 2017
- Executive Chair, Blue Crane Aviation (Pty) Ltd, 31 Oct 2012 – 2017
- Group Chief Executive Officer, South African Airways, 1 Apr 2010 – 8 October 2012
- Chief Executive Officer, South African Express Airways, Oct 2003 – March 2010
- Executive Vice President: Global Sales and Voyager, South African Airways, May 2002 – Oct 2003
- Executive Vice President: Global Passenger Services, South African Airways, Dec 2001 – Apr 2002
- Regional General Manager: Africa, Middle East and Indian Ocean Islands, South African Airways, Dec 2000 - Nov 2001
- Senior Manager: Alliances, Network Development and Systems Control, South African Airways, Apr 1999 – Nov 2000
- Manager: Market Development Manager (Africa), South African Airways, Aug 1997 – Mar 1999



- Market Analyst (America and Asia), South African Airways, Jan 1996 – July 1997

Qualifications:

- BA (Economics and Statistics), University of Swaziland
 - Certificate in Management, Henley College
 - Transnet Executive Development Program, GIBS
 - Additional Professional Development Programmes
4. I was the Chief Executive Officer of SAA from 1 April 2010 to 9 October 2012. When I started at SAA, the Minister of Public Enterprises at the time was Ms. Barbara Hogan and the Chairperson of the SAA Board was Ms. Cheryl Carolus. During this time, there was a strong emphasis on corporate governance within SAA, as well as clear distinctions of the spheres of competency between the Ministry, the Board and the executive management of SAA. The Board was focused on ensuring that good Corporate Governance was instilled in the system given historical breakdowns in this area.

GOVERNANCE

5. My understanding of good corporate governance is clear segregation of accountability and responsibilities, allocation of duties in order to ensure that there is transparency and fairness and adherence to compliance in decisions taken within an organization.

6. When I was interviewed for the position of CEO, it was evident that the understanding of governance was very important to the role.

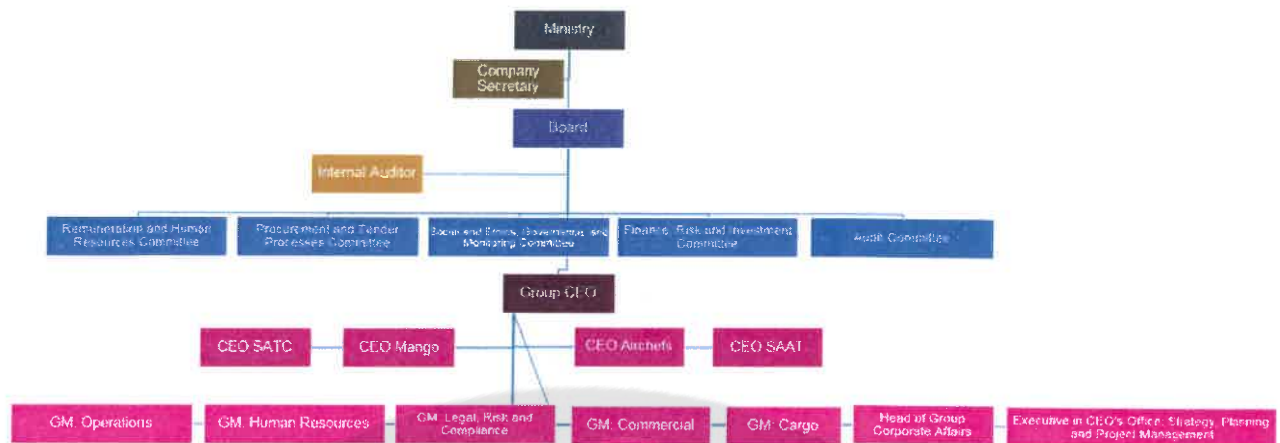
6.1 The Shareholder Ministry appointed the Board.

6.2 The Board appoints the CEO.

6.3 The Board reports to the Ministry of the Department of Public Enterprises.

6.4 Under the delegations of authority, the CEO's authority for decision making is clearly set out including an escalation matrix to the Board and Shareholder. Delegations of authority are clear frameworks within which decisions ought to be taken.

7. The Board formed a number of sub-committees through which matters which required Board attention or approval would first be presented and interrogated by Management. The Committees would then make recommendations to the Board for items that required approval. This aligns with good corporate governance principles.



8. The key governance documents between the Board / SAA and the Shareholder Representative were the:
 - a. Memorandum of Incorporation (“MOI”) (ANN SM1);
 - b. Significance and Materiality Framework;
 - c. Shareholders Compact ; and
 - d. Corporate Plan.
9. In addition, the MOI was more specific than other MOI's of other state owned enterprises. The then Minister Gigaba took concerns with the specificity of the MOI.
10. During my tenure the Board formalized a new Delegation of Authority which helped to guide the CEO broadly on what matters were delegated by the Board to the CEO and matters that would require Committee or Board approval. I equally formalized Delegations of Authority for my team setting out matters and values for approvals.

11. My experience of governance within SAA under the then Minister Barbara Hogan:

- Governance was well managed and transparent under the Ministry of Barbara Hogan and chair of Cheryl Carolus.
- My counterpart within the Ministry was the Director-General ("DG") and the Chair's level of communication was with the Minister.
- The Board followed strict processes to ensure good corporate governance. (Sub-Committees and Subsidiary Board)

12. My experience of the approach to governance under the then Minister Gigaba's ("Mr Gigaba") tenure was different. Under his tenure, there developed a very grey line on what would ordinarily be the Board responsibilities and duties, Management's responsibilities and duties, and delegation.

13. No proper protocols were followed for engagement with the organisation, or rather, the established protocols were ignored and individuals who ordinarily would not interact with the Organisation were now playing a lead role on matters normally reserved (as per the delegation) to Management of the organisation or the Board. Specifically, the involvement of the then Minister Gigaba's Advisor, Mr. Siyabonga Mahlangu, was significant and unprecedented.

PM

14. Operational and Financial updates to the Shareholders Representatives which included representatives from National Treasury were held via Monthly Monitoring meetings.

MUMBAI ROUTE

15. I first became aware of the issue of the closure of the SAA-Mumbai route at a SAA Board meeting sometime in early 2010. This would have been soon after my appointment as CEO which was on the 1 April 2010.
16. In my recent discussions with Mr. Teddy Daka ("**Mr. Daka**") SAA Board Member (2009-October 2012), we discussed the Mumbai route. In doing so I recalled that the SAA Board had first been approached to consider the closure of the Mumbai route by the then Acting CEO Mr. Chris Smythe ("**Mr. Smythe**").
17. In our discussions with Mr. Daka, he recalled that, Mr. Smythe had called an emergency board sub-committee meeting sometime in February 2010 where he provided a submission for the committee ("**Finance Risk and Investment Committee**" or "**FRIC**") to consider the closure of the Mumbai Route. This submission had been drawn-up by Mr. Jan Blake ("**Mr. Blake**") and presented by Mr. Smythe.. Mr. Daka informed that a the FRIC apparently did not make a decision but deferred the issue to be discussed when a new, permanent CEO was appointed. I was not part of this meeting.

18. In the submission to FRIC, Mr. Smythe motivated that SAA completely cancel the Mumbai route as it was: **(ANN SM2)**
- a. Loss Making and the route had been under pressure since 2006
 - b. The SAA team at the time did not believe that the route would turn profitable in the near future as SAA could not compete with other airlines who were operating that route at the time. (Emirates, Etihad and Qatar)
19. In the submission, Smythe argued that with ceasing of the Mumbai Route, SAA could use the freed up metal on other routes that were more profitable.
20. Lastly, in the submission to the FRIC, Mr. Smythe suggested that SAA should enter into a code-sharing agreement with Jet Airways who were planning on establishing a service on 1 April 2010. Soon after my appointment, the Board raised the issue of the Mumbai Route Closure with me. The Board indicated that they required further information to the submission given by Mr. Smythe before they could make a decision. This decision would also need to be in line with the overall strategy for returning the airline to profitability.
21. From my interaction with the some Board members, I got a sense that they were uncomfortable with the proposal put forward to close the route. They felt that Mr. Smythe was putting a lot of pressure on the Board to make a decision on Mumbai. They couldn't understand why it was so urgent to have the Board decide on the future of the route considering that Mumbai was not the worst

performing SAA route. There were other routes that were doing more poorly, yet Mr. Smythe did not push for these to be closed. This concern had also been raised by the FRIC when they deliberated Mr. Blake's submission to cancel the Mumbai Route. **(ANN SM2.1)**

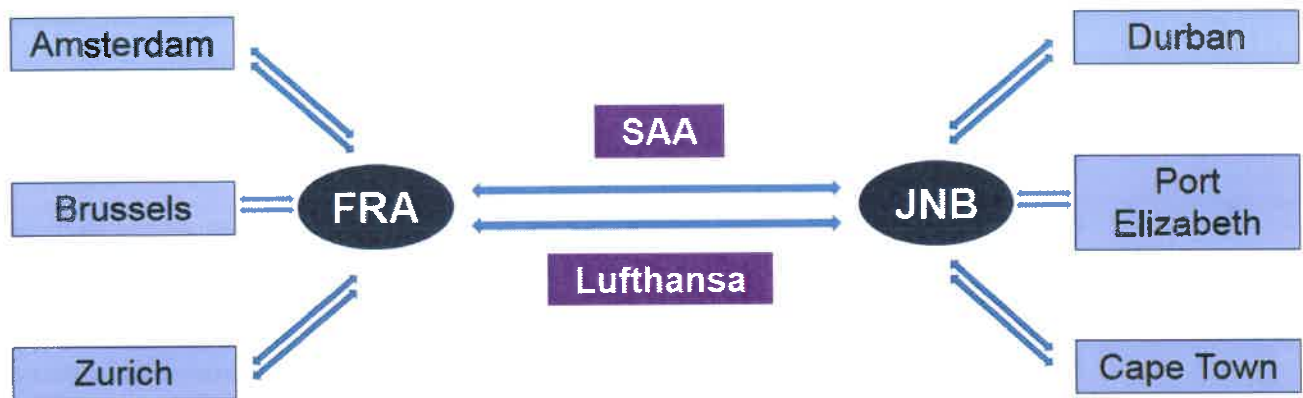
22. In my approach to the task on hand, I engaged the Commercial team, who worked with the Asia team to prepare a comprehensive Analysis and Report on whether SAA should close the Mumbai route.
23. I am not sure of the date that I made this submission to the Board, but I think it may have been sometime between June 2010-September 2010. In that meeting the Board resolved that SAA would not terminate the Mumbai route, based on the management submission and recommendation. The Board however appreciated the value of improving the code-share arrangements, as part of the improvement initiatives on the route. This did not rule out the possibility of SAA entering into a code-sharing agreement with Jet Airways or any other airline for the Mumbai route. It must be noted that SAA already had a code-share arrangement with Air India at the time, which was suboptimal, but this, in addition to the above, could also have been explored to optimize the route performance.
24. I would like to make a point that Code-Sharing agreements are common in the Airlines industry and they can take various forms. **(Ann SM3)**. The purpose of code-shares is to improve network reach. At that time SAA was branded as an

African Airline with Global reach; SAA opened the Mumbai market in 1995 (15 years at the time of the discussion of the route closure), invested and built market value, thus the next logical step, to improve profitability and capitalize on the market, including BRICS, was to expand connectivity with a behind and beyond type of code-share. It is generally accepted that starting a new route does have a profitability inertia. In the result, Jet Airways wanted SAA to agree to a hand-over the market and investments that SAA had developed over about 15 years when establishing the route. This was also at a time when SAA was pursuing options to improve the profitability of the route.. The most common arrangements include but are not limited to the following examples:

- a. SAA and Airline B could both be operating on the same route, where SAA as an example, is offering 2 flights weekly and the Airline B is also offering 2 Flights a week. SAA and Airline B could enter into an arrangement where, Airline B flights become available to SAA customers when they book for a particular destination. The airlines essentially “combine their flights”. Customers who are booking flights on either of the airlines platforms will have 4 flight options instead of 2. Each airline will continue to operate the route using their own aircrafts.
- b. The additional benefits of code-sharing are that airlines are able to offer their customers seamless connections to beyond points i.e. SAA passenger buying a ticket to Amsterdam via Frankfurt. Passenger buys a single ticket on SA

Code even though they would physically fly with Lufthansa as a code share partner airline on the Frankfurt-Amsterdam leg. In such cases SAA enters into an agreement with another airline to use their flights as metal connection to destinations beyond those that SAA flies to. E.g. SAA customer wants to fly to Amsterdam, Netherlands, however SAA does not fly directly to Amsterdam. SAA would then enter into an agreement with Lufthansa Airlines which states that SAA would operate one part of the leg, to Frankfurt, Germany. In the second leg of the journey, to Amsterdam, this would be operated by Lufthansa Airlines. The customers need not purchase two different tickets for the connecting flight, the trip from South Africa to Munich would be marketed on SAA's platforms as an SAA flight, even though part of the journey is not operated by SAA.

- c. Another type of code-share could take an example of Jet Blue code-sharing with SAA on the US to South Africa route on which Jet Blue would only be offering physical flights from New York to beyond points to the US but have the ability to sell a Los Angeles flight to Johannesburg with SAA operating the route between the US to South Africa i.e. Jet Blue with no metal operating between US and SA.



25. The arrangement proposed by Smythe is not unusual in fact SAA currently has a similar arrangement with Emirates. SAA does not fly to Dubai, however SAA customers can book flights to Dubai using the SAA platform and Emirates metal will be used for trip. SAA does not fly this route.
26. The proposal that had been submitted to the Board by Smythe was that Jet Airways would take over the whole Mumbai route and SAA completely terminate operations on its own metal and pass on all forward bookings already in place to Jet Airways. Typically, passengers on routes such as Mumbai book their flights months before their date of travel. In effect, Jet Airways would gain an additional benefit of those passengers who made such advance bookings. SAA had invested about 15 years – since 1995 - to build the Johannesburg – Mumbai route at this stage and was the sole Operator that offered a direct flight from SA to India. The only part SAA would play was that customers would use the SAA platform to book a flight to Mumbai however SAA would not operate any part of this route.

ASm [Signature]

27. As part of the team that was tasked by the Board to perform a comprehensive analysis on the Mumbai route, we did not believe that terminating the Mumbai route and allowing Jet Airways to take over the route, was going to benefit SAA. We raised the following issues to back-up our position:

- a. The Mumbai Route contributed substantial Revenue to SAA network by connecting traffic beyond Johannesburg.
- b. The Mumbai route was a strategic route because it was a gateway to the South America market. It was quicker to fly from Asia, via South Africa to South America. Therefore, this route opened up a few key South American Markets for SAA which would have yielded substantial Revenue.
- c. The India - Asia route would be a key strategic corridor in the Growth Strategy to turn the airline around.
- d. Lastly, the Mumbai route was not the worst performing route. There were other routes which were not as strategic as the Mumbai one.

28. The submission to the Board therefore recommended that the Mumbai route not be cancelled. The team was tasked with implementing the corrective actions to improve the performance of the route by:

- a. Considering a change of Aircraft Type;
- b. Improving connecting traffic from the India market by improving the interline/code-share arrangements etc.;
- c. Strengthening SAA's Sales Ability

29. The Board supported this and a decision was taken not to close the route.

30. As mentioned above, just because the Board had decided against the cancellation of the Mumbai route, it did not mean that the Board was adverse to SAA entering into a network or revenue enhancing Code-Sharing Agreement with Jet Airways or any other Airlines on the Mumbai route.

31. With this as the background, post the Board Resolution, the SAA team engaged with Jet Airways Executives to see if the two entities could come to a working solution based purely on a network or revenue enhancing code share partnership.

32. I was presented by the Commission with a document that shows an interaction between the Chairperson of the Board at the time, Ms. Cheryl Carolus, and the then Minister Hogan, dated 1 September 2010. In this correspondence Ms. Hogan is requesting that the Chairperson provide an explanation as to why she insisted that the Minister does not meet with the Executives from Jet Airways, being Mr. Naresh Goyal, in a meeting that had been scheduled for 31 August

2010. In this correspondence, the Minister also made inquiries into the issue around the Mumbai Route. **(ANN SM4)**

33. I was familiar with the contents of the letter. During her time as Chairperson Ms. Carolus was very open about the discussions that she was having with the Shareholder and she would share these at Board Meetings.
34. From my recollections from what Ms. Carolus told us about her interactions with the Minister, she relayed and clarified that SAA Management was dealing with the issue of Jet Airways and the negotiations around the Mumbai Route. These were operational matters and it would not be fitting for the Minister to get involved. Hence the reason that she asked the Minister to hold off from meeting with Mr. Naresh Goyal ("**Mr. Goyal**").
35. Under the Ministry of Barbara Hogan, correspondence with the Minister was via the Chairperson of the Board.
36. The Commission's Investigators presented me with a letter dated 8 September 2010, which was written by the Chairperson of the Board in response to Minister Hogan Letter sent on the 1st September 2010. In this letter she was updating the Minister on who Jet Airways was, gave her a quick background on the issues surrounding the Mumbai route, Jet Airways involvement and what steps SAA



management had taken in dealing with Jet Airways proposal for a code-sharing agreement. (ANN SM5)

37. In this correspondence Ms. Carolus also provided the Minister with a calculation and rationale behind the SAA Board resolving not to terminate the Mumbai route. From the contents of the letter, I can see that Ms. Carolus used extracts from the submission made to the Board regarding the closure of the Mumbai route to communicate to the Minister on the Board's resolution.
38. In the same letter, I noted that Ms. Carolus informed the Minister that SAA Management including myself had met with Mr. Naresh Goyal to discuss how the two entities could reach a mutually beneficial code-sharing agreement. I remember Management meeting executives from Jet Airways but do not recall Mr. Goyal being present. What I do recall, is my meeting with him in 2011 in a meeting with Mr Gigaba. I knew Mr Goyal professionally, having met him several times at various International Airline Forums.

10 January 2011: The First Meeting

39. On 10 January 2011, SAA was invited to a meeting with Mr Gigaba. Mr. Gigaba had replaced Ms. Barbara Hogan as Department of Public Enterprise ("DPE") Minister, around November 2010. The purpose of the meeting was that the Minister had requested a briefing concerning the Mumbai Route. Ms. Carolus

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could not make the meeting, and she requested myself, as CEO, and Mr. Zakhele Sithole ("**Mr. Sithole**"), who has since deceased, who was the Board's Audit and Risk Chair ("**ARC**") at the time to represent Ms. Carolus and the Board at the meeting.. The meeting was to be held in Pretoria.

40. I had prepared a memorandum in line with the Submission I had made to the Board in 2010, for presentation to the Ministry. I also ensured that an electronic copy was sent to the DG of DPE, Mr. Tshediso Matona.
41. I arrived on time with Mr. Sithole for the meeting at the DPE offices in Pretoria. On arrival we were met by Mr. Siyabonga Mahlangu ("**Mr. Mahlangu**"), who was Mr. Gigaba's legal advisor. We were then informed that we were waiting for a representative from Jet Airways to arrive and join the meeting. We would later be advised that the Jet Airways representative had been delayed in Cape Town, and we overheard Mr. Mahlangu stating that they were travelling by private jet to Johannesburg.
42. During the period of waiting, we had an opportunity to meet with Mr. Gigaba, who requested to be briefed on the SAA/Jet Airways relationship. I then proceeded to take Mr. Gigaba through the memorandum, emphasizing reasons for not recommending the cancellation of the SAA - Mumbai route. Additionally, I explained to Mr. Gigaba that Jet Airways owed money to SAA, and were delaying in payment, and therefore could not really be trusted as a partner. I indicated that any strategic partnership that could be forged with Jet Airways would need to be

beneficial for both parties, and more so, for SAA. The memorandum alluded to the fact that the proposal by Jet Airways to close the route would have no main stream benefit to SAA. If anything, it would increasingly benefit Jet Airways.

43. To the best of my recollection, I can confirm that Mr. Sithole was present as he had accompanied me but I cannot remember the other attendees at the pre-meeting briefing with the Minister. Mr. Gigaba then acknowledged the brief, and we then continued our wait.
44. We waited for over two hours before the meeting finally proceeded with all the relevant stakeholders. During the time that we were waiting for the Jet Airways representative, I received a call from Advocate Sandra Coetzee (**"Advocate Coetzee"**), who at the time was employed in the SAA Legal Department. Advocate Coetzee then informed me that there was a gentleman from Jet Airways who was in possession of an agreement and he was demanding that it be signed because SAA had agreed to cancel the Mumbai route. I advised her to stall because I had no knowledge of this agreement, and we had not even commenced with the meeting with Mr. Gigaba, and the representative from Jet Airways.
45. The Commissions' investigators have provided me with Advocate Coetzee affidavit where she has detailed the above scenario. I can confirm that Advocate Coetzee's submissions generally accords with my recollection of the events of that day. **(ANN SM6)**



46. Eventually, the Jet Airways representatives, led by Mr. Goyal, arrived and we went into the meeting. Present at this meeting was myself, Mr. Sithole, Mr. Gigaba, Deputy Minister Mr. Ben Martins, Mr. Mahlangu, and there were other DPE representatives.
47. Mr. Goyal commenced the meeting by running through his CV and highlighting all the international forums he was a member of and how Jet Airways was the only Indian carrier within the Star Alliance and so forth. He did not seem to appreciate my confirmation that in light of me being a member of these forums, I knew of him well. He proceeded to arrogantly state that SAA should get rid of the route because they had a better product that would be more suitable for the market.
48. He attacked SAA for delaying the closure of the Mumbai route, specifically the current management for being stubborn whilst previous SAA management had already confirmed that they will ensure that the route was closed. I then pushed him for the name of the individual from SAA who had agreed to the closure. He then reluctantly mentioned Mr. Chris Smythe, who was the acting CEO before I took up the position. Mr. Smythe was also the person whom had canvassed the closure of the Mumbai Route to the Board. Mr. Goyal continued to seemingly instruct everyone present about how the process should be taken forward. I experienced Mr. Goyal's address at the meeting synonymous to him addressing "his executives". At that point, Mr. Martins stepped in, as he seemingly did not take kindly to Mr. Goyal's instructive tone. He said something to the effect that



“we are here to assist, but don’t tell us how we should be doing things in our country”.

49. Mr. Gigaba was silent throughout the exchange. Mr. Goyal apologised and the meeting continued. Mr. Gigaba’s contribution in the meeting was to indicate that he would like SAA to set up an urgent meeting with Jet Airways to discuss potential cooperation between the airlines. Mr. Gigaba gave no reasons why the meeting was urgent. I did not consider it to be a matter of urgency especially when the terms presented were to the detriment of SAA. I did not understand why Mr. Goyal was being afforded special attention by the Ministry.

24 January 2011

50. As per the request by Mr. Gigaba, SAA and Jet Airways then scheduled a follow-up meeting for the parties to find a middle ground. This meeting took place on 24 January 2011.
51. I attended the first part of the meeting to ensure that there was alignment to find a workable solution to the mutual benefit of the parties.
52. Jet Airways persisted that SAA cancel the route and code-share on them. SAA had indicated that this was not negotiable.

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53. Jet Airways subsequently made concessions on a few points and this proposal was analyzed by SAA and still found not to be commercially viable. At the end of the meeting, the two entities were not able to find consensus.

11 April 2011

54. On 11 April 2011, I wrote a Memorandum to the DG where I was providing him with an update on the discussions we had had with Jet Airways.. In that Memorandum I indicated to the DG that SAA and Jet Airways had not found a workable solution. The proposals put forward by Jet Airways were not commercially viable to SAA. However, I did indicate that we were still open to further negotiations. **(ANN SM7)**
55. As an annexure to the letter sent to the DG we compiled an evaluation where we outlined different scenarios which SAA would agree or not agree to a code-sharing agreement with Jet Airways. We wanted to present this to the Ministry so that the Minister could see that we had done extensive work in determining how a code-sharing agreement would need to be structured for it to make commercial sense for SAA. **(ANN SM8)**

14 April 2011: The Second Meeting - in Cape Town

56. Around 14 April 2011, the Chairperson and I were requested to attend an urgent meeting with Mr. Gigaba in Cape Town on less than 24 hours' notice. Ms. Carolus was unable to attend the meeting, given the short notice period of the request. The Minister's Office called in the afternoon to request our urgent attendance the next day to the meeting in Cape Town. They had said that this meeting was very urgent and needed to take place immediately.
57. Ms. Carolus then requested I speak to Mr. Daka to accompany me to the meeting. Mr. Daka inquired from me what the meeting was about. I explained that I thought it may have something to do with the Financial Performance of SAA, but had not been provided with an agenda, nor an indication on what material to prepare for the meeting. The Ministers' Office had not provided us with an agenda, but merely requested that we fly to Cape Town for an urgent meeting.
58. Mr. Daka did not really want to attend the meeting as he had planned family commitments with his daughter. To accommodate Mr. Daka, SAA made arrangements to fly both Mr. Daka and his daughter to Cape Town.
59. Present at the meeting on that day was Mr. Gigaba, Mr. Mahlangu, Ms. Raisibe Lepule, Professor Vusi Gumede, DPE's DG Mr. Tshediso Matoma and other DPE departmental personnel.
60. Mr. Gigaba indicated at the start of the meeting that he had several items that he wanted to cover with us, but first, he wanted an update on the Jet Airways/SAA



discussions. This surprised me because updates had regularly been provided to the Transport team at DPE. I then commenced to provide the same update already provided on several previous occasions: that the Jet-Airways relationship was not beneficial to SAA. It simply did not make commercial sense to enter into the proposed code-share arrangement. I indicated that the team had been open-minded in finding a workable solution to the partnership without much success as Jet Airways' focus was not geared towards a commercial code-share partnership but still intent on getting SAA metal off the route completely. Before I could even conclude my briefing, Mr. Mahlangu angrily intervened.

61. He berated SAA for wasting time and tax-payers' money on the Mumbai route, when there were RDP's houses and toilets to be built. I attempted to continue with the logic SAA was applying in protecting the closure of the Mumbai-route. However, Mr. Mahlangu was hearing none of it. He continued his rant and then became personal in stating that he had a problem with Executives who fail to do what they are told and continuously present analysis only, and do not understand issues of national importance.
62. Mr. Gigaba failed to reprimand Mr. Mahlangu on his unacceptable, rude behavior. As a result, I lost my temper and told Mr. Mahlangu in no uncertain terms that I will tolerate anyone disrespecting me, as I strive to always be respectful of others. I informed him that he could not talk to me in that manner and attack me personally. We were engaged in business discussion. Mr. Gigaba remained silent throughout this incident.

- 62.1 Days after the meeting, Mr. Mahlangu would telephone me to request a few minutes of my time. He offered to take the Gautrain to meet with me. We met at the Intercontinental Hotel at the OR Tambo International Airport. He personally apologized to me for his bad behavior and informed me to the effect that at the end of the day, he was just doing his job and acting on instruction.
63. Mr. Daka, who was also perturbed at how the meeting was degenerating, addressed the Mr Gigaba and told him that he was concerned at the direction the meeting was going. Mr. Daka also told the Mr Gigaba that he did not understand why Mr. Mahlangu took the view which he had expressed that he believed SAA, especially Ms. Mzimela, was sabotaging the potential arrangement between SAA and Jet Airways. Mr. Daka categorically stated that the Executive had done extensive work around the analysis of the closure of the Mumbai route and the Board was satisfied with the quality of that analysis, hence they resolved to not cancel the Mumbai Route. We flatly refused to be bullied by Mr. Mahlangu.
64. Mr. Gigaba responded and stated that he would still like SAA and Jet Airways to "try and find each other". He then asked the Jet Airways personnel to be invited into the meeting. The Jet Airways individuals had evidently been waiting to be invited into the meeting. No further discussions took place at this point except for introductions. It is my assumption that the earlier meeting and how it played out did not go according to plan. The meeting was closed without further discussions

taking place, except Mr Gigaba's directive that the DPE DG, Mr Matona, would co-ordinate further discussions between the parties.

65. After this meeting, I do not recall ever meeting Minister Gigaba to discuss the Mumbai Route again. Post this meeting, the DG co-ordinated further discussions or updates regarding this matter.
66. The Commissions' Investigators presented me with a letter which was written by Mr. Matona addressed to me as the CEO of SAA. This letter is dated 9 May 2011. This letter served as a follow-up to the 14 April 2011 meeting we had had with Mr. Gigaba. The DG requested that SAA to furnish the department with all the Cost Benefit Analysis which we had done to assess the commercial viability of the Mumbai route closure. In this letter, the DG also stated that he would be asking Jet Airways to provide him with similar analysis. **(ANN SM9)**
67. I do not fully recall, but I believe SAA did provide the DG with the information that he was requiring, even though it was a duplication of reports we had previously provided to the Department.
68. The SAA team had many more of such interactions with the DG as he was now driving the Mumbai route issues from the side of the Department.
69. At some point during 2011, Jet Airways finally conceded to one of the options of the code-sharing arrangements. SAA and Jet Airways signed a Letter of Intent on

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29 November 2011, and on 14 December 2011 the two entities signed a Memorandum of Understanding ("**MOU**") to enter into a code-sharing agreement.

70. Before SAA could formally enter into a contract with Jet Airways, SAA had to check if such arrangement would be allowed by the Competition Commission. In our discussion leading up to the signing of the MOU, Jet Airways had agreed that they would temporarily suspend their Mumbai route and this was effective 12 June 2012. The implications of this was that SAA would once again be the only operator operating the Mumbai route from Johannesburg therefore any agreement between Jet Airways and SAA to code share could potentially have been viewed as collusive behavior by the Competition Commission.
71. The SAA Legal department appointed Stemela Lubbe Attorneys to provide an opinion on whether SAA should apply for an exemption on the code-sharing agreement from the Competition Commission. The attorneys recommended that SAA apply for the code-sharing exemption from Competition Commission. (**ANN SM10**)
72. On 27 March 2012, I wrote to the DG and informed him on the above progress. I also informed him that before we could formalize the arrangement with Jet Airways, we would need to approach the Competition Commission and file an application for a code-sharing exemption. Due to such a process usually taking about 6-12months, I asked the DG whether the DPE could assist in facilitating the application, as their involvement could assist to expedite the process. (**ANN**

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SM11) From an SAA perspective, there was no real urgency unlike the Ministry who were constantly applying pressure on SAA to prioritize, progress and finalize the deal. The pressure put by the Ministry on SAA to conclude the Mumbai route deal triggered SAA calling on them to expedite what the Ministry considered an urgency.

73. On 9 May 2012, I once again wrote to DG and provided him with an update on where SAA and Jet Airways were in their intention to formalize the relationship. I informed him that SAA had instructed Stemela Lubbe Attorneys to start the process of applying for an exemption from the Competition Commission. **(ANN SM12)**
74. I think our application to the Competition Commission was approved, but I do not have access to such document. I surmise that it was approved because on 1 October 2012, SAA and Jet Airways signed a Code-Sharing agreement. The Agreement was signed by the GM: Commercial and the Head of Alliances. **(ANN SM13)**
75. At the stage at which the Code-Sharing Agreement was concluded, the agreed terms were beneficial to SAA in that Jet Airways totally moved off the Johannesburg-Mumbai route and enhanced added benefits to SAA on beyond points.

76. I resigned from SAA in October 2012 so I am not privy to what transpired after my resignation on how the code-share was actually implemented and whether it was aligned to the recommendations. **(ANN SM14)**
77. One of the things that struck me the most about the Mumbai route discussions was that, when Mr. Gigaba took over, DPE became very involved in the detail of the Mumbai Route and in ensuring that the SAA and Jet Airways deal materialized. We were never called to the DPE to discuss any other code-share arrangement, despite many other challenging routes. Code-share discussions with all other airlines were pursued and managed by the Commercial department.
78. From the documents I have been shown by the Commission's Investigators, it appears DPE and Jet Airways were in direct communication discussing issues relating to the Mumbai route which would ordinarily have been dealt with operationally by the Commercial Division of SAA.
79. In this regard, on the letters dated 18 April 2011 and 14 May 2011, Mr. Goyal sent Mr. Matona a route analysis where he laid out 3 scenarios where they thought the SAA and Jet Airways arrangement could work. They also presented cost breakdown analysis to the Minister's Office, arguing on why the code-sharing agreement, where SAA completely gets off the route, would be profitable for SAA in the long run. **(ANN SM15 & SM17)**

80. This kind of interaction was very odd. The DG's office had no business discussing operational issues with potential operational partners. The role of the Shareholder is to provide strategic overview and not involve themselves in operational issues. The discussions Jet Airways were having with DG should have been held with the SAA executives.

81. I believe that this was a serious overstep.

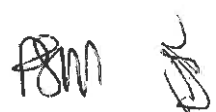
THE MINISTER'S ADVISOR – MR SIYABONGA MAHLANGU

82. Mr. Siyabonga Mahlangu was the then Minister Gigaba's advisor. He was at SAA regularly, which was very unusual for a Ministerial advisor. Mr. Mahlangu had a particular keen interest in SAA's procurement. He would query procurement decisions. One example was in relation to an IT tender for an airline aviation system. I cannot recall the date and tender details. Airline aviation systems are a very specialized product and, as a result, there are very few players in the market who have the knowledge and expertise to provide them. Despite this, Mr. Mahlangu complained to me that he had received feedback from black-owned companies, alleging that they were being excluded from the tender.

83. When he raised this concern, my response was to explain that an airline aviation system was not a general IT System; it was highly specialized and, as a result, there were very few suppliers. It was therefore not a matter of excluding black-

owned suppliers but rather that there was simply a limited pool of suppliers with the necessary skills and experience to provide this particular type of system. Additionally, I reiterated that I did not get involved in the Procurement process until a recommendation for the team was brought to my attention, should the value of the transaction exceed the delegation of my reportees.

84. Advocate Sandra Coetzee also reported a peculiar meeting requested by the DPE of all the SOC's Legal departments at which Mr. Mahlangu was present together with other officials from the Department. This matter had apparently been called to discuss procurement of Legal Firms within SOC's. What was reported to me as peculiar is how Mr. Mahlangu took over the Chairmanship of the meeting and took an instructive tone on what he expected as outcomes to the Initiatives. This was at the point at which it was raised by those present, that whilst the Initiative was supported, it would still need to follow each individual company's governance and procurement processes.
85. Mr. Mahlangu regularly accused me of not being a team player because I insisted that everything needed to be in writing. He asked me to meet him for coffee on at least two occasions and each time it was unclear what he expected as an outcome. It would be on these type of occasions that he would tell me about how other CEO's in sister airlines were "team players" and that I was not, but rather a technocrat, and he was disturbed that I always wanted information to be set out in writing. I emphasized the need for decisions and communications to be in writing because that was one way of maintaining good corporate governance and



ensuring that there were records of all important interactions between the executive management, the Board and the Ministry.

EVENTS LEADING UP TO MY RESIGNATION

The Board situation in 2012

86. During 2012, the relationship between the Board, Management and the Ministry became increasingly strained. This manifested in various operational challenges including:
- a. The delay in the Guarantee letter required to correct the Going Concern of the Airline.
 - b. The delay of the AGM occasioned by the Ministry - putting all material transactions at risk as lenders regarding cash flow assistance, rolling-over debt and new facilities and vendors were awaiting the latest financials before committing to aircraft leases (including renewals) despite the submission of the AFS being compliant with the PFMA.
87. Mr. Russel Loubscher, one of the Board members at the time, indicated that he wanted to resign as he was highly suspicious of DPE's motives in delaying critical decisions for the business which was resulting in value destruction. He raised his concerns both with Ms. Carolus and me. However, he was persuaded to stay at that point. This was at some stage during 2012. Ms. Carolus and I persuaded him to stay on the basis that he was already aware of the battles we were facing and

that his resignation would potentially be used to further distract the work of the Board.

88. There were also repeated leaks to the media about confidential SAA information, which was challenging to manage.
89. One of the key turnaround items I was tasked to deal with in the Corporate Plan was a Fleet Plan to support the Growth Strategy. In order to deliver on this task, and having heard the horror stories around Fleet procurement, I established a Fleet Committee made up of a representative team of Senior Executives from Legal, Commercial, Finance, Flight Operations, Risk and Compliance. The subsidiaries like SAA Technical and Mango which were also represented.
90. The Committee's mandate was to conduct a full analysis of the Company's fleet requirements, provide recommendations to resolve the legacy issues pertaining to the A320 contract, and manage the RFP for wide body aircraft as part of the solution. All members were required to sign full disclosures and strict confidentiality undertakings, to minimize leaks relating to the process. A small consultancy by the name of Daylight Capital was appointed to assist with the more complex Financial Analysis.
91. During this process, I was inundated with queries relating to how far the process was by both the potential suppliers and other parties. My response on all queries, was that I did not participate in any way with the process, or work of the Fleet

Committee, except for being provided with regular updates in terms of where they were with the process and timings. The process had been purposely set up this way to allow the Committee to independently assess and put forward recommendations.

92. Once the Fleet Committee's work had been concluded and their recommendations were made to me, I recommended the outcome to the Sub-Committee and Board. The recommendations were subsequently approved. The results of the RFP were presented and approved by the Board of Directors and further submitted to the DPE for approval by the Ministry. It was communicated to the Ministry how the timing was a critical element in the fleet recommendation. This was to ensure improved coordination in terms of the termination of leases, the commencement of new leases, aircraft availability and so forth.
93. No response was received from DPE to all of the above critical matters.
94. On the 27th of September 2012, a number of the Board members resigned. These included Ms. Carolus and Mr. Loubscher.
95. I considered resigning with the Majority of the Board on that day. However, I was persuaded by Ms. Carolus not to do so in the interest of the stability of the Organisation. I acceded to the request but indicated to Ms. Carolus that critical to my remaining in the position would be the caliber of the new Board appointed and in particular the Chairperson.

96. After the Board's resignation, I received a phone call from Ms. Myeni (who at that time was a Board member) to say that she was going to be appointed as Acting-Chair. She requested a meeting with me so that she could be brought up to speed on matters. However, Mr. Vusile Kona was then announced as the new Chair, and not Ms. Myeni. The meeting never took place.
97. Mr. Kona and I had a meeting shortly after his appointment. I indicated to him that there were many tensions between SAA and the DPE Ministry and that I was going to need his support to remain in the position of CEO, and for him to approach and obtain confirmation from the Ministry.
98. At this stage, I understood that I was perceived by the Ministry as an uncooperative person who was unwilling to "toe the line" in that I was strict on ensuring that good governance and due process was followed. I had held out on the Jet Airways deal and had consistently maintained that the route should not be cancelled. I also, on numerous occasions, had to tell them that I did not get involved in procurement processes and that it was bad governance to interfere. My senses indicated that the DPE Ministry believed that if the Board was changed, I would be forced to toe the line. I had also heard from people who were concerned about me that this was the narrative, especially because there was frustration that their other 'methods' had not succeeded.

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99. Within days of his appointment, Mr. Kona requested information on the Aircraft procurement process and also asked to look into Technical Maintenance procurement urgently. He said that he had been asked to look specifically into the procurement processes relating to aircraft. This was unusual because, as I indicated above, under Ms. Carolus's stewardship, the Board was very clear about the limits of its involvement in procurement processes. I did not hand over any documentation.
100. By this stage, it had become untenable for me to remain in the position as CEO as it was evident that the push-back on Procurement matters would need to continue albeit without a strong Chairperson who I shared similar values and principles with. I therefore met with Mr. Kona and handed in my resignation letter. In the letter, I covered that I had asked him to confirm that I had requested his support but that it had not been given. I also raised my concerns about the breach of procurement protocol and I recorded that I believed that there had been a smear campaign against me, instigated by the Department of Public Enterprises. I have never received a response to that letter of resignation. Mr. Kona's main concern was to establish what I wanted as part of my exit package. I indicated that I wanted nothing, except what was rightfully due to me.
101. I received a call from a Board member at the time, Advocate Lindi Nkosi-Thomas SC, requesting that I meet with her that evening. She wanted to understand what had happened and why I had taken the decision to resign. She indicated that she understood my frustration but was disappointed that I had resigned with



immediate effect. This surprised me because I had not stated that in my letter, but rather that I would be guided by the board on the handover process to be undertaken, however it was my desire to leave soonest. I established that Mr. Kona had circulated an urgent resolution to the board to be appointed as Executive Chairperson in light of my “immediate” resignation.

102. I started to receive calls from my Executives raising concerns about the calls they were receiving from the Chairperson relating mainly to procurement matters. I requested a meeting with the Chairperson in which I indicated that I would be vacating the office with immediate effect, given that he had assumed Executive duties. This was unequivocally accepted by him.

SA EXPRESS: NORTH-WEST GROUND HANDLING AND EML

103. In my current role as the Interim CEO of SA Express Airways, my office has been working closely with the Audit Committee of the Board who have been mandated (by the Board) to finalise all outstanding Forensic Investigations within the organisation relating to various irregular contracts.
104. The focus of the organisation was to take action against the Executives and employees which were involved in these matters and various charges have since been laid.



105. We have also provided the Commission investigators with the Forensic documents relating to North West (including Valotech), EML, and Koreneka.


DEPONENT

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me, Commissioner of Oaths, at KEMPTON PARK on this the 06 day of JUNE 2019 the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.


COMMISSIONER OF OATHS

FULL NAMES: Ephraim July Lusenga
EX OFFICIO COMMISSIONER OF OATHS
REGISTERED NON-PRACTISING ATTORNEY
ADDRESS: REPUBLIC OF SOUTH AFRICA
1 JONES ROAD, AIRWAYS PARK
EX OFFICIO: O.R TAMBO INTERNATIONAL AIRPORT
JOHANNESBURG, 1627



Annexure “1”



I certify that these are the new Articles of Association which were adopted in terms of a Special Resolution at a General Meeting of the Company on

Date :

Director

15/03/2010

REPUBLIC OF SOUTH AFRICA

COMPANIES ACT 1973

ARTICLES OF ASSOCIATION

OF A COMPANY HAVING A SHARE CAPITAL

NOT ADOPTING SCHEDULE 1

(Section 60(1); regulation 18)

Registration No. of Company

(Insert)

1997 022444/07

Name of Company:

SOUTH AFRICAN AIRWAYS (PROPRIETARY) LIMITED ("the Company")

The Articles of Table B contained in Schedule 1 to the Companies Act 1973, as amended, shall not apply to the Company.

The Articles of the Company are as follows:

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1. INTERPRETATION

1.1 In the Interpretation of these Articles and unless the subject or context otherwise requires, the following words and expressions shall have the following meanings attributed to them:

- 1.1.1** "Alliance" means an arrangement with an airline or a group of airlines for the purpose of optimising air transport services where the arrangement involves the provision of rights and obligations relating to the use of the designator of another airline and its trademarks, and/or its branding.
- 1.1.2** "Applicable SOE Legislation" means, collectively, the Principal Act, the PFMA, the Treasury Regulations and any other legislation or regulations which may be applicable to the Company and/or the conduct of the Company's business from time to time by virtue of the fact that the State is a Member of the Company;
- 1.1.3** "Articles" means the articles of association for the time being of the Company and any amendment thereof or substitution therefor from time to time;
- 1.1.4** "Authorised Representative" means a Person authorised, in terms of the Companies Act, by a company or other body corporate to act as its representative at any General Meeting;
- 1.1.5** "Beneficial Owner" means any Person registered in the Company's register pursuant to section 140A of the Companies Act as having a 'beneficial interest' in the shares issued by the Company, but excluding Members;
- 1.1.6** "Board" means the board of Directors of the Company at the relevant time;
- 1.1.7** "Business" means operating from South Africa as a national and international airline;
- 1.1.8** "Capital" means the share capital or stated capital, the case may be, of the Company;
- 1.1.9** "Charity" means any association, company, trust or other Person with charitable or like objectives;

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- 1.1.10 "Companies Act" means the Companies Act, No. 61 of 1973, and any amendment thereof or substitution therefor from time to time;
- 1.1.11 "Company" means South African (SAA) (Proprietary) Limited (registration number (1997/022444/07) and with registered address at (insert);
- 1.1.12 "Directors" means the directors from time to time of the Company, constituting the Board;
- 1.1.13 "ex officio Director" means a person who becomes a Director of the Company as a consequence of that person holding some other office, title, designation, or similar status in the Company;
- 1.1.14 "General Meeting" means a general meeting of the Members;
- 1.1.15 "Group Company" means any subsidiary of the Company;
- 1.1.16 "Legal Representative" means any Person who has submitted the necessary proof of his appointment as and is entitled to be entered in the register as a Member *nomine officii* as:
- 1.1.16.1 an executor, administrator, trustee, curator or guardian in respect of the estate of a deceased Member or of a Member whose estate has been sequestrated or of a Member who is otherwise under disability;
 - 1.1.16.2 the liquidator of any Member which is a body corporate in the course of being wound up; or
 - 1.1.16.3 the judicial manager of any Member which is a company under judicial management;
- 1.1.17 "Member" means the registered holder of any share(s) in the Company at the relevant time;
- 1.1.18 "Memorandum" means the Memorandum of Association for the time being of the Company;
- 1.1.19 "Minister" means the Minister of Public Enterprises in his/her capacity as the representative of the State, or if any other Minister is designated as being responsible to

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hold the shares of the Company on behalf of the State, then that Minister acting in such capacity;

1.1.20 "Odd-Lot" means a total holding by a single Member of less than:

1.1.20.1 100 shares; or

1.1.20.2 In the case of Securities other than shares, the minimum number of Securities with an aggregate nominal value of no less that R100,00,

or such greater or lesser number of Securities determined by the Directors at the relevant time;

1.1.21 "Odd-Lot Offer" means an offer to the holders of Odd-Lots in terms of which the holders of the Odd-Lots may elect to:

1.1.21.1 top up their holding; or

1.1.21.2 sell their Odd-Lot; and

may or may not provide that the holders may elect to retain their Odd-Lot holding;

1.1.22 "Office" means the registered office for the time being of the Company;

1.1.23 "Person" includes any company incorporated or registered as such under any law, any other juristic person and any body of persons corporate or unincorporate;

1.1.24 "PFMA" means the Public Finance Management Act, No.1 of 1999, and any amendment thereof or substitution therefor from time to time;

1.1.25 "Principal Act" means South African Airways Act, No. 5 of 2007

1.1.26 "Remuneration Guidelines" means the remuneration guidelines in respect of the remuneration of Directors of State Owned Entities and as approved by cabinet on 10 October 2007, as may be amended by time to time;

1.1.27 "Securities" includes stocks, shares, debentures, specialist securities, notes, units of stock issued in place

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of shares, and options on stocks, shares or debentures, notes or units, and rights thereto, issued by the Company;

- 1.1.28 "Sign" includes the reproduction of a signature by lithography, printing, or any kind of stamp or any other mechanical process, and "Signature" has the corresponding meaning;
- 1.1.29 "State" means the Government of the Republic of South Africa;
- 1.1.30 "Transfer Office" means the office(s) of the transfer secretary(ies) of the Company from time to time; and
- 1.1.31 "Treasury Regulations" means the regulations issued by the National Treasury in terms of section 76 of the PFMA and any amendment thereof or substitution therefor from time to time.

1.2 Words importing one gender include the other genders and words in the singular number include the plural, and vice versa.

1.3 Any word or expression which is defined in the Companies Act and which is not otherwise defined in these Articles shall have the meaning assigned thereto in the Companies Act.

1.4 If any provision in Article 1 is a substantive provision conferring rights or imposing obligations on any party, then notwithstanding that such provision is contained in this Article 1, effect shall be given thereto as if such provision were a substantive provision in the body of the Articles.

1.5 Notwithstanding any provision of these Articles or the Memorandum and notwithstanding the omission of any provision from these Articles, but subject to the provisions of the Applicable SOE Legislation (to the extent applicable), the Company may do anything which the Companies Act empowers a company to do if so authorised by its Articles.

2. HEADING AND REFERENCES

These Articles are to be construed as not including the headings to Articles which are for information only.

3. APPLICABLE SOE LEGISLATION

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For as long as the Company and/or the conduct of the Company's business is regulated by the Applicable SOE Legislation or any part thereof:

- 3.1 the Company and the Board shall exercise the powers and authority vested in them in terms of these Articles in accordance with the relevant provisions of the Applicable SOE Legislation; and
- 3.2 these Articles shall be read subject to, and shall not confer any powers or authority on the Company or the Board in conflict with, the Applicable SOE Legislation.

4. PRIVATE COMPANY

The Company is a private company and accordingly -

- 4.1 It is prohibited from offering any of its shares or debentures to the public for subscription;
- 4.2 the number of Members of the Company (exclusive of persons who are in the employment of the Company and of persons who having been formerly in the employment of the Company were, while in such employment, and have continued after the determination of such employment to be, Members of the Company) shall be limited to 50 (fifty); and
- 4.3 the right to transfer shares shall be restricted as hereinafter provided.

5. ISSUE OF SHARES AND DEBENTURES

- 5.1 Subject to Articles 5.2 and 5.4, the Companies Act (insofar as its application is not excluded by the Applicable SOE Legislation), the Applicable SOE Legislation and the Memorandum and without prejudice to any special right previously conferred on the holder of an issued share, a General Meeting, or the Directors with the prior approval of a General Meeting, may:

- 5.1.1 issue or grant options to subscribe for any shares (including with preferred, deferred or other special rights or restrictions, whether in regard to dividends, voting, return of Capital or otherwise);
- 5.1.2 create, issue, re-issue and grant options to subscribe for secured or unsecured debentures or grant options to subscribe; and

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5.1.3 Issue or grant options to subscribe for preference shares which are, or at the option of the Company are liable, to be redeemed,

on such terms and conditions as a General Meeting or the Directors, as the case may be, may determine from time to time, provided that the Company may not issue share warrants or bearer shares.

5.2 Notwithstanding the provisions of Article 5.1, unless the Directors are authorised in terms of Article 5.3, if any offer is made of new Securities of any class to Members of that class, then the Securities in question shall firstly be offered to those Members in proportion, as nearly as may be, to the amount of the Securities of that class held by those Members, except where the Securities are issued for the acquisition of assets.

5.3 A General Meeting may authorise the Directors to issue unissued Securities and/or give options to subscribe for unissued Securities either specifically or generally as the Directors in their discretion think fit, subject to compliance with the provisions of the Companies Act.

5.4 Notwithstanding the provisions of Article 5.1, should there be any issued preference shares of any class in the Capital of the Company then no further Securities ranking in priority to, or *pari passu* with, any such class of issued preference shares shall be created or issued without:

5.4.1 the consent in writing of the holders of at least three-quarters of such class of preference shares; or

5.4.2 the sanction of a resolution of the holders of such class of preference shares, passed at a separate General Meeting of such holders, at which preference shareholders holding in aggregate not less than one-quarter of the total votes of all the preference shareholders holding Securities in that class entitled to vote at that meeting, are present in person or by proxy, and the resolution has been passed by not less than three-quarters of the total votes to which the Members of that class, present in person or by proxy, are entitled, and the provisions of these Articles relating to General Meetings shall apply to any such separate General Meeting.

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5.5 Subject to the provisions of the Companies Act, the Company may pay a commission not exceeding 10% to any Person in consideration for his subscribing or agreeing to subscribe or for procuring or agreeing to procure subscriptions, whether absolute or conditional, for any Securities of the Company.

5.6 Subject to the provisions of the Companies Act, the Company may pay interest from time to time on any shares issued to raise money for redeeming the costs of constructing works or buildings or the provision of plant, provided that for so long as the State is the sole or majority shareholder of the Company such right may only be exercised with the prior written approval of the Minister.

6. SHARES AND CERTIFICATES OF SHARES

6.1 Subject to the provisions of the Companies Act, certificates in respect of Securities issued by the Company shall be issued under the authority of the Directors in such manner and form as the Directors may determine from time to time, provided that:

6.1.1 If any Member requires more than one certificate in respect of shares registered in his name he shall pay such sum as the Directors may determine, for each additional certificate;

6.1.2 If any certificate is defaced, lost or destroyed, it may be replaced on payment of such fee, if any, and on such terms, if any, as to evidence and/or indemnity and/or advertisement and/or other terms or conditions as the Directors may determine;

6.1.3 all Signatures may be affixed or placed on certificates by autographic, mechanical or electronic means; and

6.1.4 a certificate signed by 2 (two) Directors or by 1 (one) Director and an officer of the Company duly authorised thereto by the Directors, and specifying the shares or stock held by any Member, shall be *prima facie* evidence of the title of such Member to such shares or stock.

6.2 Without limitation to and in accordance with section 140A of the Companies Act, where Securities issued by the Company are registered in the name of a Member, and that registered Member is not the holder of the beneficial interest in all the shares held by such registered Member, then such registered Member shall, at the end of every three month period required by the Companies Act (initially having commenced on 30 June 1999), disclose to the

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Company the identity of each Person on whose behalf it directly and indirectly holds Securities and the number and class of Securities issued by the Company held on behalf of each such Person.

7. JOINT HOLDERS OF SHARES

7.1 Where two or more Persons are registered as the holders of any share they shall be deemed to hold that share jointly, subject to the following:

7.1.1 the joint holders of any share shall be liable jointly and severally in respect of any obligation arising out of or in connection with the holding of that share;

7.1.2 notwithstanding anything to the contrary in these Articles, on the death, sequestration, liquidation or legal disability of anyone of such joint holders:

7.1.2.1 the other remaining joint holder(s) may be recognised, at the discretion of the Directors, as the only Person(s) having title to such share, but

7.1.2.2 any such holder or his estate, as the case may be, shall not be released from any obligation which such joint holder or his estate had arising out of or in connection with the holding of that share;

7.1.3 any one of such joint holders may give effectual receipts for any dividends, bonuses or returns of Capital or other accruals payable to such joint holders;

7.1.4 only the joint holder whose name stands first in the register shall be entitled to:

7.1.4.1 delivery of the certificate relating to that share; and

7.1.4.2 to receive notices from the Company (and any notice given to such joint holder shall be deemed to be notice to all the joint holders);

7.1.5 any one of the joint holders of any share conferring a right to vote may vote either personally or by proxy at any meeting in respect of such share as if he were solely entitled thereto, and if more than one of such joint holders be present at any meeting, either personally or—

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by proxy, then only the joint holder who tenders the vote and whose name stands in the register before the other joint holder(s) who is/are present in person or by proxy shall be entitled to vote in respect of that share.

8. TRANSFER AND TRANSMISSION OF SHARES

8.1 Every instrument of transfer of a share shall be left at the Transfer Office at which it is presented for registration, accompanied by the certificate of the shares to be transferred, and/or such other evidence as the Company may require to prove the title of the transferor or his rights to transfer the shares. All authorities to sign transfer deeds granted by a Member for the purpose of transferring shares which may be lodged, produced or exhibited with or to the Company at any of its Transfer Office(s) shall as between the Company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon until such time as express notice in writing of the revocation of the same shall have been given and lodged at the Company's Transfer Office(s) at which the authority was lodged, produced or exhibited. Even after the giving and lodging of such notices the Company shall be entitled to give effect to any instruments signed under the authority to sign and certified by any officer of the Company, as being in order before the giving and lodging of such notice.

8.2 The Company shall maintain Transfer Offices at such place(s) in the Republic of South Africa or elsewhere as the Directors may determine from time to time.

8.3 A Legal Representative (not being one of several joint holders) shall be the only Person recognised by the Company as a Member or having any title to a share registered in the name of the Member whom he represents.

8.4 A Legal Representative shall be entitled to be registered as a Member *nomine officii* in respect of any share registered in the name of any Member whom he represents or to transfer any such share to himself or any other Person provided that:

8.4.1 the Directors shall in any of such cases have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the Member in whose name it is registered;

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- 8.4.2** should any Legal Representative fail to elect either to be registered as a Member or to transfer any such share to himself or any other Person within 90 (ninety) days after the Directors have given him notice requiring him to do so, then the Directors shall be entitled to withhold any dividends, bonuses, return of Capital or other accruals in respect of such share until compliance with the notice; and
- 8.4.3** any Member who is represented by a Legal Representative shall not be released from any obligation arising out of or in connection with the holding of that share.
- 8.5** Except as required by law or these Articles or ordered by a Court of competent jurisdiction, no Person shall be recognised by the Company as holding any share upon any trust and the Company shall not be bound by or required to recognise (even when having notice of it) any interest or other right in or in respect of any share, except the holder's absolute right to the entirety of the share. Without affecting the foregoing, the Directors may in their discretion record in the Company's register of Members that any share is held in trust or by a nominee and for whom that share is so held but there shall be no obligation on the Company to verify the existence of the trust or principal or the legal status of any Person who holds a share as a trustee or nominee, or to ensure the carrying out of any trust (express or implied) in respect of any such share.
- 8.6** The instrument in respect of transfer of a share shall be in the usual or common form or such other form as the Directors may approve and shall be signed by the transferor and the transferee (to the extent required by law).
- 8.7** If a Member of the Company desires to sell all or any of his Securities in the Company he shall give notice, in writing, of his intention to sell, to the Directors and state the price he requires for the Securities. The Directors shall within one month of the date of receipt of the notice referred to in Article 8.7 advise every other Member of the Company of the contents thereof and each such Member shall be entitled to acquire the Securities so offered within one month after the date of the receipt of such advice; provided that if more than one Member makes an offer for all of the Securities so offered, the Securities shall be sold to each such Member in equal proportions, and where fractional proportions of Securities remain, such Members shall become joint holders of such fractional proportions of the Securities.

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- 8.8 If the Members of the Company are unable to agree upon the selling price of the Securities, the auditor of the Company may be requested to determine the true and fair value thereof and the Members shall accept that value as the selling price of the shares.
- 8.9 If none of the Members of the Company offers to purchase the Securities within the time referred to in Article 8.7, or if Members of the Company offer to purchase a part of the Securities so offered, the Member who is offering the Securities for sale may offer the Securities or the remaining portion of the Securities which have not been purchased by Members of the Company, for sale to any other person and the Directors shall approve the registration of the Securities in the name of that person unless they have good reason to refuse such registration.

9. ALTERATION OF MEMORANDUM

Subject to the Companies Act and the Applicable SOE Legislation (to the extent applicable), the Company shall be entitled to alter the provisions of its Memorandum.

10. ALTERATION OF CAPITAL

Subject to the Companies Act, the Company may if authorised by ordinary resolution (or special resolution where required by the Companies Act) of the Members in General Meeting:

- 10.1 increase, consolidate, divide, sub-divide, convert or cancel all or any part of its Capital or Securities, as the case may be;
- 10.2 reduce its Capital, any capital redemption reserve fund, or any share premium account in any way whatsoever, including without limitation:
- 10.2.1 by way of payment to its Members;
 - 10.2.2 by cancelling any share Capital which is lost or unrepresented by available assets; and/or
 - 10.2.3 by cancelling shares which have not been taken or agreed to be taken by any Person or which are repurchased by the Company and diminish the amount of the share Capital by the amount of shares so cancelled;
- 10.3 convert any of its preference shares into preference shares which are, or at the option of the Company are liable, to be redeemed;

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- 10.4 convert all or any of its ordinary shares into redeemable preference shares;
- 10.5 convert all or any of its paid-up shares into stock and reconvert such stock into paid-up shares;
- 10.6 convert all or any of its par value shares into shares having no par value and vice versa; and
- 10.7 convert shares of any class into shares of any other class, whether such shares are issued or not.

11. FRACTIONS OF SHARES

If, on any capitalisation issue or consolidation of shares or other transaction with the Company, Members would, but for the provisions of this Article, become entitled to fractions of Securities, all allocations of such Securities will be rounded up or down based on standard rounding convention (i.e. allocations will be rounded up to the nearest whole number if they are equal to or greater than 0.5) resulting in the allocations of whole Securities and no fractional entitlements.

12. ACQUISITION OF OWN SHARES AND ODD-LOT OFFERS

12.1 Subject to the authorities, consents and requirements as may from time to time be stipulated by law, the Companies Act and the Applicable SOE Legislation (to the extent applicable), the Members in General Meeting may by special resolution approve the acquisition by the Company or any of its subsidiaries of shares issued by itself or by its holding company. Such approval may be a general approval or a specific approval for a particular transaction. If such approval is given in the form of a general authority to the Directors, it shall only be valid until the next annual General Meeting of the Company, but it may be varied or revoked by special resolution by any General Meeting of the Company at any time prior to such annual General Meeting.

12.2 Without limitation to the generality of Article 12.1, and subject to the Companies Act and the Applicable SOE Legislation (to the extent applicable), the Company may with the requisite specific or general approval of its Members in General Meeting make Odd-Lot Offers to the holders of Odd-Lots. Any Odd-Lot Offer that is specifically approved by the Members in General Meeting may provide that if the holder of an Odd-Lot does not make an alternative election, then such holder will by default have elected to sell his Odd-Lot holding to the Company (i.e. a default "expropriation" of the Odd-Lot).


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13. SECURITIES OTHER THAN SHARES

In so far as these Articles may be binding on the holder of Securities other than shares, except where the law or terms applicable to such other Securities provide otherwise, the provisions of Articles 6.1, 7.1 to 8.6 and 12.2 shall, where appropriate, apply to such other Securities, adopted accordingly (*mutatis mutandis*).

14. PAYMENTS TO MEMBERS

The Company may make payments to its Members subject to the provisions of the Companies Act. Without limiting the generality of the foregoing power, such payments other than dividends which are governed by Article 29, may be:

14.1 made out of the Capital of the Company;

14.2 authorised specifically or generally by way of an ordinary resolution (or where required by the Companies Act, a special resolution) of the Members of the Company in General Meeting.

15. VARIATION OF RIGHTS

15.1 Unless otherwise provided by the terms of issue of the shares of any class or by the terms under which such shares are held, the special rights or restrictions attached to all or any shares of that class may be amended, modified, varied or cancelled by a General Meeting, provided that any such amendment, modification, variation or cancellation which directly or indirectly and adversely affects the special rights or restrictions attached to all or any shares of that class may only be effected with:

15.1.1 the prior written consent of the holders of at least three-quarters of the shares in question; or

15.1.2 the prior sanction of a resolution passed at a separate General Meeting of the holders of the shares in question in the same manner, *mutatis mutandis*, as a special resolution, and the provisions of these Articles relating to General Meetings shall apply to any such separate General Meeting, except that a quorum at any such General Meeting shall be such number of Persons holding or representing by proxy at least twenty-five percent of the issued shares of the class in question provided that if a quorum is not so present the meeting shall be adjourned to the fifth business day thereafter and the Members present or represented at the

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reconvening of the adjourned meeting shall constitute a quorum.

- 15.2 Unless otherwise provided by the terms of issue or by these Articles, the special rights or conditions attached to all or any class of shares shall be deemed not to be adversely affected (whether directly or indirectly) by the creation or issue of any other shares ranking *pari passu* with (but in no respect in priority to) any such shares already issued by the Company.
- 15.3 For purposes of these Articles, any shares not ranking *pari passu* in all respects with any other shares (including in respect of rate of dividend and any other term of issue) shall be deemed to constitute a separate class of shares.

16. GENERAL MEETINGS

16.1 Subject to the provisions of the Companies Act:

- 16.1.1 a General Meeting shall be held at such time and place as may be determined by the Directors;
- 16.1.2 for as long as the State is the only Member of the Company, the Minister may convene a General Meeting at such time and place as he may deem fit;
- 16.1.3 notices and supporting documentation of general or annual General Meetings shall be sent to Members;
- 16.1.4 the notice of a General Meeting shall state the place, day and hour of, and the nature of the business to be transacted at the General Meeting; and
- 16.1.5 not less than 21 (twenty one) clear days' notice shall be given of all annual General Meetings or meetings called for the passing of a special resolution and not less than 14 (fourteen) clear days' notice shall be given of any other General Meeting, provided that the Members may waive or consent to short notice of General Meetings in accordance with the provisions of the Companies Act.

- 16.2 A Member shall be entitled to appoint a proxy to attend and speak and on a poll, to vote in his stead at any General Meeting in accordance with the Companies Act.

17. PROCEEDINGS AT GENERAL MEETINGS

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- 17.1 Subject to the provisions of Section 190 of the Companies Act, and unless a General Meeting determines that there shall be a greater number, a quorum for a General Meeting shall:
- 17.1.1 for as long as the State is the only Member of the Company, be one Member present in person and entitled to attend and vote;
 - 17.1.2 for as long as there are two Members of the Company, be two Members present in person and entitled to attend and vote; and
 - 17.1.3 otherwise, be three Members present in person and entitled to attend and vote.
- 17.2 Should a quorum not be present within one-half hour after the appointed time for a General Meeting, the General Meeting, if convened by or on a requisition of Members, shall be dissolved and in any other case shall stand adjourned to the same day (or if that day be a public holiday, the next business day) in the next week at the same time and place, and a quorum at any such adjourned General Meeting shall be the minimum number required by the Companies Act.
- 17.3 The chairperson or, failing him, a deputy chairperson (if any, or if more than one of them is present and willing to act, the most senior of them) of the Directors shall be the chairperson of each General Meeting provided that if no chairperson or deputy chairperson is present or willing to act, the Members present may elect one of the Directors present to be chairperson or, if no Director is present or willing to act as chairperson, the Members present may elect one of their number to be chairperson of that General Meeting.
- 17.4 The Board may both prior to and during any General Meeting make any arrangements and impose any restrictions which it considers appropriate to ensure the security and/or the orderly conduct of any such General Meeting. Including, without limitation, arranging, in so far as is lawful, for any Person attending any such meeting to be searched, for items of personal property which may be taken into any such meeting to be restricted and for any Person (whether or not a Member of the Company) who refuses to comply with any such arrangements or restrictions to be refused entry to or excluded from any such meeting.
- 17.5 The chairperson of any General Meeting of the Company shall take such action as he thinks fit to promote the orderly conduct of the

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business of such meeting as laid down in the notice of such meeting, including, without limitation, asking any Person or Persons (whether or not a Member or Members of the Company) to leave such meeting and, if necessary, having such Person or Persons excluded from such meeting. The decision of the chairperson on matters relating to the orderly conduct of such meeting and on any other matters of procedure or arising incidentally from the business of such meeting shall be final as shall be his determination, acting in good faith, as to whether any matter is of such nature. Nothing in this Article 17.5 shall limit any other power vested in the chairperson.

- 17.6 The chairperson of a General Meeting shall, if obliged to do so in terms of the Companies Act, adjourn a General Meeting from time to time.
- 17.7 Subject to the provisions of the Companies Act, it shall not be necessary to give notice of any adjournment of a General Meeting.
- 17.8 No business shall be transacted at the resumption of any adjourned General Meeting other than the business left unfinished at the General Meeting from which the adjournment took place.
- 17.9 Subject to any restriction as to voting to which any Member or share may be subject, a Member who is present in person, by Authorised Representative or by proxy shall have:
- 17.9.1 one vote on a show of hands;
 - 17.9.2 on a poll, that proportion of the total votes in the Company which the aggregate amount of the nominal value of the shares held by such Member bears to the aggregate amount of the nominal value of all the shares issued by the Company and accordingly, for so long as all the shares have the same nominal value, one vote for each share of which that Member is the registered holder.
- 17.10 At any General Meeting a resolution put to the vote shall be decided by a show of hands unless a poll is demanded (before or shortly after the declaration of the result of a show of hands) by:
- 17.10.1 the chairperson of the General Meeting; or
 - 17.10.2 not less than five Members having the right to vote at such a meeting; or


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17.10.3 a Member or Members representing not less than one-tenth of the total voting rights of all the Members having the right to vote at the meeting; or

17.10.4 a Member or Members entitled to vote at the meeting and holding in the aggregate not less than one-tenth of the issued share Capital of the company,

provided that such Member or Members as contemplated in this Article 17.10 shall be entitled to demand that, while the result of the poll shall be entered in the minutes, the votes of the Member or Members in such poll shall remain secret.

17.11 On a show of hands at a General Meeting a declaration by the chairperson as to the result of the voting on any particular resolution and an entry to that effect in the minutes shall be conclusive proof of that result, without proof of the number or proportions of votes recorded in favour of and/or against such resolution.

17.12 If a poll is demanded at a General Meeting:

17.12.1 on the election of a chairperson or on an adjournment, the poll shall be taken immediately and in such manner as the General Meeting determines, and on any other question shall be taken at such time and in such manner as the chairperson of the General Meeting directs;

17.12.2 the result of the poll shall be deemed to be the resolution of the General Meeting at which the poll was demanded;

17.12.3 the demand shall not preclude the General Meeting from considering any question other than that on which the poll has been demanded unless the General Meeting decides otherwise;

17.12.4 the demand may be withdrawn at any time.

17.13 No objection shall be taken to the admission or rejection of any vote except at the General Meeting at which the vote in dispute is cast, or any adjournment thereof. The chairperson of that General Meeting shall determine any such objection and his determination shall be final and binding.

17.14 A resolution in writing signed by all Members entitled to receive notice of and to attend and vote at a General Meeting shall be as valid and effective as if it had been passed at a General

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Meeting properly called and held. Any such resolution may consist of several documents, each of which may be signed by one or more Members and shall be deemed to have been passed on the date on which it was signed by the last Member who signed it, unless a statement to the contrary is made in that resolution.

- 17.15 Any director or a representative of the Company's auditors and/or attorneys may attend and speak at any General Meeting, but may not vote thereat unless he is an authorised proxy of a Member.

18. OVERFLOW OF GENERAL MEETINGS

- 18.1 The Board may make such arrangements as it shall in its absolute discretion consider to be appropriate for any of the following purposes:

- 18.1.1 to regulate the level of attendance at any place specified for the holding of a General Meeting or any adjournment of such a meeting; or
- 18.1.2 to ensure the safety of people attending at any such place; or
- 18.1.3 to facilitate attendance at such meeting or adjournment.

and may from time to time vary any such arrangements or make new arrangements in their place. Such arrangements may include, without prejudice to the generality of the foregoing, the issue of tickets or the use of some random means of selection or otherwise as the Board shall consider to be appropriate.

- 18.2 In the case of any meeting to which such arrangements apply, the Board may when specifying the place of the meeting:

- 18.2.1 direct that the meeting shall be held at a place specified in the notice ("Main Meeting Place") at which the chairperson of the meeting shall preside; and
- 18.2.2 make arrangements for simultaneous attendance and participation at another place or other places by Members, Authorised Representatives and proxies otherwise entitled to attend the General Meeting but excluded from it under the provisions of this Article or who wish to attend at the other place or any of such other places; provided that all Members can communicate and participate in the proceedings.


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18.3 Such arrangements for simultaneous attendance may include arrangements for regulating the level of attendance in the manner aforesaid at the other place or any of such other places.

18.4 For the purposes of all other provisions of these Articles (unless the context requires otherwise) the Members shall be deemed to be meeting in one place and that shall be the Main Meeting Place.

19. PROXIES

19.1 A proxy form, power of attorney or other authority in respect of a General Meeting shall be in writing and Signed by or on behalf of the Member.

19.2 Subject to the provisions of the Companies Act, a proxy form shall:

19.2.1 The instrument appointing a proxy shall be in the following form or as near thereto as circumstances permit:

LIMITED

I, _____ of _____ being a member of _____ Limited hereby appoint _____ of _____ or failing him _____ of _____ or failing him _____ of _____ as my proxy to vote for me and on my behalf at the annual general meeting (as the case may be) of the Company to be held on the _____ day of _____ and at any adjournment thereof as follows:

In favour of Against Abstain from Voting

Resolution to _____

Resolution to _____

Resolution to _____

(Indicate instruction to proxy by way of a cross in space provided above).

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- 19.2.2 be deposited at the Transfer Office or with the Company secretary not less than twenty-four hours before the time appointed for the holding of the General Meeting (or any adjournment thereof) at which the Person named therein proposes to vote;
- 19.2.3 In addition to the authority conferred by the Companies Act except insofar as it provides otherwise, be deemed to include the power generally to act at the General Meeting in question, subject to any specific direction as to the manner of voting;
- 19.2.4 unless the contrary is stated thereon, be valid at every adjournment of the meeting to which it relates;
- 19.2.5 not be used at the resumption of an adjourned General Meeting if it could not have been used at the General Meeting from which it was adjourned for any reason other than that it was not lodged timeously for the meeting from which the adjournment took place; and
- 19.2.6 not be valid after the expiry of two months after the date when it was Signed unless it specifically provides otherwise.
- 19.3 If two or more valid but differing Instruments of proxy are received in respect of the same share for use at the same meeting or poll, the one which is last received (regardless of its date or of the date or time of its execution or dispatch) shall be treated as replacing and revoking the others as regards that share and, if the Company is unable to determine which was last received, none of them shall be treated as valid in respect of that share.
- 19.4 From time to time the Directors may (consistently with the Companies Act and these Articles) make such regulations and establish such procedures as they consider appropriate to receive and verify the appointment of a proxy or the notice of revocation of a proxy. The Directors may upon reasonable notice to member, which shall not be less than 7 working days, modify or revoke any such regulations from time to time as they think fit but without prejudice to the validity of any appointment or revocation of a proxy in existence at the date of any such modification or revocation. Without prejudice to the generality of the foregoing the chairperson of the General Meeting shall be authorised to conclusively determine any matter or dispute relating to the appointment or revocation or purported appointment or

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revocation of a proxy or any instructions containing or purporting to be contained in such appointment or revocation.

19.5 A vote cast or done in accordance with the terms of a proxy form shall be deemed to be valid notwithstanding:

- 19.5.1 the previous death, insanity, or any other legal disability of the Person appointing the proxy;
- 19.5.2 the revocation of the proxy; or
- 19.5.3 the transfer of a share in respect of which the proxy was given,

unless notice as to any of the abovementioned matters shall have been received by the Company at its Office or by the chairperson of the meeting at the place of the General Meeting if not held at the Company's Office, before the commencement of the General Meeting at which the vote was cast or the act was done or before the poll on which the vote was cast.

20. AUTHORISED REPRESENTATIVES

20.1 A company or other body corporate that is a Member may in terms of section 188 of the Companies Act, by resolution of its directors or other governing body, authorise any Person to act as its representative at any General Meeting of the Company and to exercise the rights and votes attaching to the shares held by it as if the representative was the individual Member. Notwithstanding the foregoing the chairperson of the General Meeting shall be entitled to request reasonable evidence of any representative's appointment; failing presentation of such reasonable evidence, the chairperson may exclude the representative from attending and voting at the General Meeting. For the purpose of this Article a certified copy of the extract of the minutes recording the adoption of the resolution shall be reasonable evidence of such authorisation.

20.2 Notwithstanding anything to the contrary in these Articles, under no circumstances may the aggregate number of shares represented by proxies and a Person appointed in terms of Article 20.1 on behalf of a Member exceed the total number of shares registered in the name of the relevant Member. If the number of shares for which proxy voting and letters of representation have been received in respect of the shares held by the Member purport to represent shares in excess of the aggregate number of shares registered in the name of the relevant Member then:

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20.2.1 the letters of representation and Authorised Representatives shall prevail over the proxies unless the letters of representation or authorisations are revoked in writing (including telefax) by the Member prior to the meeting; and

20.2.2 subject to Article 20.2.1, unless a court orders otherwise prior to the General Meeting, the chairperson shall be entitled to determine which Authorised Representatives and proxies, if any, shall be entitled to represent the shares registered in the name of the Member, taking into account whatever considerations he, in his absolute discretion, regards as appropriate and may, without limitation:

20.2.2.1 reject all or part of the authorisations and proxies;

20.2.2.2 reduce the number of shares which an Authorised Representative or proxy may represent and vote at the General Meeting;

20.2.2.3 rule that all the shares represented by either the proxies or the Authorised Representatives or both must be proportionately reduced; and/or

20.2.2.4 make any other appropriate ruling, and

the determination of the chairperson shall be final and binding.

20.3 From time to time the Directors may (consistently with the Companies Act and these Articles) make such regulations and establish such procedures as they consider appropriate to receive and verify the appointment of an Authorised Representative or notice of revocation of an Authorised Representative contemplated in Article 20.1. The Directors may modify or revoke any such regulations from time to time as they think fit but without prejudice to the validity of any appointment or revocation of an Authorised Representative in existence at the date of any such modification or revocation. Without prejudice to the generality of the foregoing the chairperson of the General Meeting or such other Person as the Directors may determine shall be authorised to conclusively determine any matter or dispute relating to the appointment or revocation or purported appointment or revocation of an Authorised Representative or any instruction


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containing or purporting to be contained in such appointment or revocation.

- 20.4 Nothing in Articles 20.1 to 20.3 shall be construed as limiting the powers of a company or body corporate to appoint a Legal Representative in terms of section 188 of the Companies Act and in the event of any conflict, the provisions of section 188 of the Companies Act shall prevail.

21. DIRECTORS

- 21.1 Subject to the provisions of the Companies Act, unless otherwise determined by a General Meeting, the number of Directors shall be not less than 3 nor more than 16 comprising:

21.1.1 non-executive Directors (of which the majority shall be Independent Directors), from whom shall be appointed the chairman of the Company; and

21.1.2 not less than two *ex officio* Directors, who shall include the chief executive officer and chief financial officer, respectively, of the Company,

provided that the Board shall at all times consist of a majority of non-executive Directors.

- 21.2 The quorum applicable to all the meetings of the Directors shall be a majority of directors

- 21.3 The Company in General Meeting may, subject to annual review and confirmation of the Members, designate the chairperson who shall always be a non-executive Director and any terms and conditions applicable to such appointment.

- 21.4 Notwithstanding the provisions of any other Article herein, the Chief Executive Officer and the Chief Financial Officer shall be *ex officio* Directors of the company as a consequence of them holding the office of Chief Executive Officer and Chief Financial Officer, in the Company, respectively. The Board may decide on any other person who will be an *ex officio* Director of the Company as a consequence of that person holding some other office, title, designation, or similar status.

- 21.4.1 Notwithstanding the provisions of Article 21.4, an *ex officio* Director:

21.4.1.1 may not serve or continue to serve as an *ex officio* Director of the Company despite holding the relevant

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office, title, designation or similar status. If that person is or becomes ineligible or disqualified in terms of Section 69 of the Companies Act:

21.4.1.2 has all the powers and functions of any other director of the Company except to the extent that the Company may restrict the powers and functions or duties of *ex officio* Directors in these Articles; and

21.4.1.3 has all the duties, and is subject to all the liabilities, of any other Director of the Company.

21.4.2 The Board must conclude an employment contract with each *ex officio* Director the terms of which must include the following:

21.4.1 the *ex officio* Director may not serve or continue to serve as an *ex officio* if he or she no longer holds the office, title, designation or similar status which entitled him or her to be *ex officio* Director;

21.4.2 the remuneration, of the *ex officio* Director which shall be determined and adjusted from time to time by the Board, having due regard to the Remuneration Guidelines and any recommendations of the Company's remuneration committee, if any; and

21.4.3 a comprehensive performance contract.

21.5 The Company in General Meeting may designate a deputy chairperson (who shall be a non-executive Director), of the Board and determine the period for which such deputy chairperson is to hold office and the other terms and conditions applicable to such appointment. At any meeting of the Board, the chairperson of the Board, or if he is not present or willing to act as such, the deputy chairperson (if any), shall act as chairperson. If no chairperson or deputy chairperson has been elected, or is present and willing to act as such, the Directors present at any Board meeting shall choose one of their number to be chairperson of the meeting.

21.6 The Members shall have the power, from time to time, to appoint anyone as a Director, either to fill a vacancy in the Directors or as an additional Director, provided that the total number of Directors shall not at any time exceed the maximum number fixed by or in accordance with these Articles and any Director so appointed shall hold office only until the next annual General Meeting at which he shall be eligible for re-election, but shall not be taken into account in determining the Directors who are to retire by rotation at that annual General Meeting.

- 21.7** The continuing Directors may act, notwithstanding any vacancy in their number, but if and for so long as their number is reduced below the minimum number of Directors in terms of Article 21.1 required to act as such for the time being, the continuing Director(s) may act only to:
- 21.7.1** increase the number of Directors to the required minimum; or
 - 21.7.2** summon a General Meeting for that purpose, provided that if there is no Director able or willing to act then any Member may convene a General Meeting for that purpose.
- 21.8** Unless otherwise determined by a General Meeting, a Director shall not be obliged to hold any qualification shares.
- 21.9** The remuneration for Directors for their services as Directors shall be determined from time to time by the Members of the Company in General Meeting, provided that, for so long as the State is the sole or majority shareholder of the Company, such remuneration shall be determined after having due regard to the Remuneration Guidelines. Where the Members appoint a Director to fill a vacancy or an additional Director in terms of Article 21.6, then the Members may determine the remuneration of such appointed Director for his services as a Director during the period from the date of his appointment until the next annual General Meeting, provided that, for so long as the State is the sole or majority shareholder of the Company, such remuneration shall be determined after having due regard to the Remuneration Guidelines. For the purposes of clarity it is recorded that the remuneration referred to in this Article 21.9 is for services rendered in the capacity as Director of the Company (ordinarily Directors fees) and is to be distinguished from any remuneration in respect of the employment of a Director as an ex officio Director which is governed by Article 21.2 or in any other capacity which is governed by Article 21.10.
- 21.10** Subject to having due regard to the Remuneration Guidelines for so long as the State is the sole or majority shareholder of the Company, the Directors shall be paid all travelling, subsistence, and other expenses properly and necessarily incurred by them in the execution of their duties in or about the business of the Company, and in attending meetings of Directors or of committees thereof; and if any Director is required to perform extra services or to go and reside abroad or otherwise shall specifically occupied about the Company's business, he shall be

entitled to receive such remuneration as is determined by the Members in General Meeting, which may be either in addition to or in substitution for any other remuneration.

21.11 For so long as the State is the sole or majority shareholder of the Company, as regards any:

21.11.1 ex officio Directors to be appointed to any subsidiary of the Company, the Board shall appoint same after consultation with the Minister and the remuneration, or any adjustment of the remuneration, of any such ex officio Director shall be determined by the Company in General Meeting having due regard to the Remuneration Guidelines and any recommendations of the Company's remuneration committee, if any; and

21.11.2 non-executive directors to be appointed to any subsidiary of the Company, the Board shall appoint same after consultation with the board of directors of the subsidiary and the Minister.

22. MINISTER RESERVED MATTERS AND COMPULSORY DISCLOSURES

22.1 The annual budget and corporate plan of the Company must be approved by the Minister;

22.2 The Company must disclose to the Minister all changes to terms and conditions of trade which may result in a significant impact on the Company's financial statements, including Unutilised Ticket Liability and Voyager.


22.3 For so long as the State is the sole or majority shareholder in the Company, and subject to the provisions of the Companies Act (including, without limitation, section 228 thereof), the Public Finance Management Act, 1 of 1999 and Applicable SOE Legislation, the Company shall not, without the prior approval of the Minister;

22.3.1 establish or participate in the establishment of a company;

22.3.2 participate in a significant partnership, trust, unincorporated joint venture or similar arrangement;

22.3.3 acquire or dispose of a significant shareholding in a company;

22.3.4 acquire or dispose of a significant asset;


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- 22.3.5 commence or cease a significant business activity;
- 22.3.6 undertake or agree to a significant change in the nature or extent of the Company's interest in a significant partnership, trust, unincorporated joint venture or similar arrangement; or
- 22.3.7 appoint any Chief Executive Officer of the Company.
- 22.4 Subject to the significance and materiality framework applicable from time to time, the Company shall not without prior approval of the MIA:
- 22.4.1 enter into, vary in any material respect or terminate any Alliances by any Group Company and the Company;
- 22.4.2 commence or exit from routes and airports save for instances where the use of diversion airports is required;
- 22.4.3 authorise the acquisition by a Group Company and the Company of any interest in another airline;
- 22.4.4 sell a material Group Company, consolidate or amalgamate a material Group Company with any other Company;
- 22.4.5 dispose or dilute the Company's interests, directly or indirectly, in any of its material subsidiaries;
- 22.4.6 authorise the acquisition by any Group Company of any share capital or other securities of any body corporate (other than a Group Company) for a consideration (converted, where applicable, at prevailing exchange rates) of material consideration as set out in the significance and materiality framework from time to time;
- 22.4.7 dispose of a substantial or major part of the Business;
- 22.4.8 change the rights attaching to any of the Company's authorized or issued share capital other than as required by a shareholders' agreement;
- 22.4.9, merge with another Person;
- 22.4.10 raise any finance, whether equity or debt, recourse or non-recourse, in an amount (converted, where applicable, at prevailing exchange rates) of material

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consideration as set out in the significance and materiality framework from time to time; and

22.4.11 Amendment of the provisions of the Articles of Memorandum of Association of the Company

22.4.12 enter into, materially revise, renew or effect an early termination of any contract or agreement between the Company and any shareholder beneficially owning, directly or indirectly, shares representing 1% or more of the voting rights in the Company or any Group Company.


23. POWERS AND DUTIES OF THE DIRECTORS

23.1 Subject to the limitations imposed by these Articles, the management of the business and the control of the Company shall be vested in the Directors who, in addition to and without limitation of the powers expressly conferred upon them by the Companies Act, the PFMA or these Articles, may exercise or delegate to any one or more Persons (including, without limitation, a committee) all such powers and do or delegate to any one or more Persons (including, without limitation, a committee) the doing of all such acts (including the right to sub-delegate) as may be exercised or done by the Company and are not in terms of the Companies Act, the Applicable SOE Legislation or by these Articles expressly directed or required to be exercised or done by a General Meeting, subject, nevertheless, to that management not being inconsistent with any resolution passed by a General Meeting. No such resolution passed by a General Meeting shall invalidate any prior act of the Directors or any delegate(s) which would have been valid if that resolution had not been passed.

23.2 Without limiting the generality of Article 23.1, the Directors may appoint such sub-committees with such functions and powers as the Board may consider necessary for the effective exercise of its functions or as it may be obliged to appoint in terms of the Applicable SOE Legislation from time to time and to the extent applicable.

24. BORROWING POWERS

24.1 The Directors may, subject to the Applicable SOE Legislation, exercise all the powers of the Company to borrow money and to mortgage or encumber its undertaking or property and to issue debentures, debenture stock and other securities (with special privileges as to allotment of shares or stock, attending and voting


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at General Meetings, appointment of Directors or otherwise if sanctioned by a General Meeting), whether outright or as collateral security for any debt, liability or obligation of the Company or of any third party.

- 24.2 For the purposes of the provisions of Article 24.1, and subject only to section 66 of the PFMA and any other relevant provisions of the Applicable SOE Legislation (where the state is the sole or majority shareholder), the borrowing powers of the Directors shall be unlimited.

25. DISCLOSURE OF DIRECTORS' INTEREST

- 25.1 Subject to the Companies Act and the Applicable SOE Legislation (to the extent applicable), any contract or arrangement (or proposed contract or arrangement) with the Company in which a Director is interested or otherwise conflicted may be approved by a disinterested quorum of Directors after full disclosure of the relevant Director's interest in the contract.

- 25.2 Where a Director is interested in a contract or arrangement, he:

- 25.2.1 may not be counted in a quorum for the purpose of a meeting of Directors to consider any matter; and
- 25.2.2 shall not be entitled to vote in regard to any matter, relating to that contract or arrangement.

- 25.3 Subject to compliance with the provisions of the Companies Act and the Applicable SOE Legislation (to the extent applicable), a Director shall not be liable (in the absence of any agreement to the contrary) to account to the Company for any profit or other benefit arising out of any contract entered into by the Company in which he is directly or indirectly interested; provided that the Director's interest in the contract has been disclosed and the contract has been approved in accordance with these Articles.

- 25.4 For so long as the State is the majority shareholder in the Company, the Directors shall be obliged to furnish the Minister with quarterly and annual written reports setting out each Director's disclosure of interests as required under the Companies Act and the Applicable SOE Legislation and including any directorships each such Director may hold in other companies.

26. DISQUALIFICATION OF DIRECTORS

A Director shall cease to hold office as such if he:

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- 26.1 is prohibited from being or is removed as or is disqualified from acting as a Director in terms of the Companies Act or the Applicable SOE Legislation (to the extent applicable);
- 26.2 is knowingly interested in any contract or proposed contract with the Company and fails to declare his interest and its nature in the manner required by the Companies Act and the PFMA, unless the Board resolves otherwise;
- 26.3 dies, becomes of unsound mind or suffers from diminished mental capacity;
- 26.4 gives notice to the Company of his resignation as a Director with effect from the date of, or such later date as is provided for in, such notice;
- 26.5 absents himself from meetings of the Board for two or more consecutive meetings otherwise than on the business of the Company or without special leave of absence from the Board who resolve that his office shall be vacated;
- 26.6 is given notice, signed by Members holding in the aggregate more than 50% of the total voting rights on a poll of all Members then entitled to vote on a poll at a General Meeting, of the termination of his appointment.

27. PROCEEDINGS OF DIRECTORS

27.1 The Board may:

- 27.1.1 meet, adjourn, and otherwise regulate its meetings as it thinks fit and any Director shall be entitled to or request the secretary to convene a meeting of the Board; and
- 27.1.2 determine what notice shall be given of its meetings and the means of giving that notice (by way of the post, delivery, telefax or e-mail, or in any other manner it deems fit), provided that any such prior determination may be varied, depending on the circumstances and reasons for the Board meeting in question.

- 27.2 The Board and any committees established by the Board in terms of Article 23.1 may, if it so desires, convene a meeting by teleconference, videoconference or any other conference at which all Directors can communicate with each other and participate in proceedings.


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- 27.3 Unless otherwise determined by the Company in General Meeting, the quorum necessary for the transaction of the business of the Board shall be at least one-half of the Directors, provided that such quorum shall always include a majority of non-executive Directors.
- 27.4 Questions arising at any meeting of the Board shall be decided by a majority of votes and, in the event of an equality of votes, the chairperson shall have a second or casting vote.
- 27.5 Subject to the provisions of the Companies Act and these Articles, a resolution signed by all the Directors at the relevant time as contemplated by Article 27.3 inserted in the minutes, shall be as valid and effective as if it had been passed at a meeting of the Board. Any such resolution may consist of several documents and/or counterparts, each of which may be signed by one or more Directors and shall be deemed to have been passed on the date on which it was signed by the last Director who signed it (unless a statement to the contrary is made in that resolution).

28. ROTATION AND RETIREMENT OF DIRECTORS

28.1 Notwithstanding any provisions to the contrary in these Articles but subject to Articles 28.2 and 28.3, the Directors shall retire from office in the following manner:

- 28.1.1 at the conclusion of each annual General Meeting of the Company, one third of the Directors or, if their number is not a multiple of 3 (three), then the number nearest to but not less than one third of the Directors shall retire from office;
- 28.1.2 the Directors who retire in terms of 28.1.1 shall be those who have been longest in office since their last election, provided that:
- 28.1.2.1 If more than one of them were elected Directors on the same day, those to retire shall be determined by lot unless those Directors agree otherwise between themselves;
- 28.1.2.2 If at any annual General Meeting any Director will have held office for 5 (five) years since his last election, he shall also retire at the conclusion of such annual General Meeting;

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- 28.1.3 any Director appointed as such after the conclusion of the Company's preceding annual General Meeting shall retire from office at the conclusion of the annual General Meeting held immediately after his appointment;
- 28.1.4 a retiring Director shall be eligible for re-election, and, if re-elected, shall be deemed not to have vacated his office; and
- 28.1.5 no person other than a retiring Director shall be eligible for election as a Director at any annual General Meeting unless the Directors recommend otherwise, or unless not less than 7 (seven) nor more than 28 (twenty eight) days before the date appointed for the annual General Meeting, a Member who is entitled to attend and vote at such annual General Meeting shall have lodged written notice to Company's Office proposing such person as a Director, together with the consent of that person to be elected as a Director.

28.2 Notwithstanding the provisions of Article 28.1, any ex officio Director appointed in terms of Article 21.2 shall not (subject to the provisions of the contract under which he is appointed) whilst he continues to hold that position or office, be subject to retirement by rotation and such ex officio Director:


28.2.1 shall not, during the currency of such appointment, be taken into account in determining the rotation or retirement of Directors; and

28.2.2 shall be subject to the same provisions as to disqualification as provided for in Article 26 as the other Directors of the Company, and if he ceases to hold office as a Director, his appointment to such position or executive office shall *ipso facto* terminate, without prejudice to any claims for damages which may accrue to him as a result of such termination.

28.3 Notwithstanding the provisions of Articles 28.1 and 28.2, the Minister shall be entitled to determine the terms and conditions upon which Directors shall rotate and/or retire from Office for as long as the State remains the only shareholder in the Company entitled to appoint and/or remove Directors.

29. DIVIDENDS


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- 29.1 For so long as the State is the sole or majority shareholder of the Company, the Directors, after consultation with the Member, shall develop an appropriate medium-term dividend policy and framework for the Company taking into account, *inter alia*, the Company's corporate plan, shareholder compact, developmental and strategic targets and financial well-being, management and sustainability of the Company. Such dividend policy framework shall include an obligation on the Board to notify the Member timeously in the event that the Board considers that there is a prospect that no dividends will be declared in any particular year.
- 29.2 Subject to Article 29.1, a General Meeting may declare dividends to any one or more classes of Members from time to time, and with the sanction of a General Meeting any dividend declared may be paid or satisfied either wholly or in part by the distribution of such specific assets in such manner as the Directors may determine.
- 29.3 Subject to Articles 29.4 to D, dividends must be payable to Members recorded in the register at a date subsequent to the date of declaration of the dividend or date of approval by a General Meeting of a final dividend proposed by the Directors whichever is the later.
- 29.4 Any dividend so declared may be paid and satisfied, either wholly or in part, by the distribution of specific assets, and in particular of the paid up shares or debentures of this or any other company, or in cash or in any one or more of such ways as the Directors may at the time of declaring the dividend determine and direct, and where any difficulty arises in regard to the distribution they may settle the same as they think expedient, and in particular, may reasonably fix the value for distribution of such specific assets or any part thereof, and may determine that cash payments shall be made to any Members upon the basis of the value so fixed in order to adjust the rights of all parties and may vest any such assets in trustees upon such trusts for the Persons entitled to the dividend as may seem expedient to them.
- 29.5 The Company may, at the risk of the Member, transmit (including, without limitation, by cheque) any dividend or other amount payable in respect of a share to the address of the holder thereof recorded in the register or such other address as the holder thereof may previously have given to the Company in writing, and shall not be responsible for any loss or damage suffered arising out of or in connection with such transmission.
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30. RESERVES

The Directors may:

- 30.1 set aside and carry to a reserve fund any part of the profits of the Company, which may at their discretion be applied for any purpose for which the profits of the Company may properly be applied in such manner as the Directors deem fit; and
- 30.2 divide any such reserve account into such special funds as they deem fit and consolidate such special funds (or any part thereof) into one or more accounts.

provided that for as long as the State is the majority shareholder in the Company, the approval of the Minister of Finance and all such other approvals as may be required in terms of the Applicable SOE Legislation shall be obtained for such action.

31. CAPITALISATION

- 31.1 Subject to the provisions of the Companies Act, the Directors or the Company in General Meeting, on recommendation of the Directors, may resolve to capitalise the whole or any part of:

- 31.1.1 any amount available for distribution as a dividend and not required for the payment or provision of dividends on preference shares:

- 31.1.2 any amount standing to the credit of any of the Company's reserve accounts (including its share premium account or capital redemption fund),

by setting such amount free for distribution in the same proportion amongst the Members who would have been entitled thereto if it had been distributed by way of a dividend (subject to the rights of any Members to whom shares have been issued on special conditions) on condition that the amount in question is not paid to the Members in question but is applied in paying up in full for unissued shares of the Company; provided that for so long as the State is the sole or majority shareholder of the Company the rights to capitalise as contemplated in this Article 31.1 may only be exercised subject to the prior written approval of the Minister.

- 31.2 Whenever a resolution relating to a capitalisation shall have been passed by a General Meeting, the Directors shall:


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- 31.2.1 be obliged to give effect to any such resolution;
- 31.2.2 be entitled to authorise any Person on behalf of all the Members concerned to, where the resolution of the General Meeting so provides, enter into an agreement with the Company providing for the allotment to them, credited as fully paid, of any shares to which they may be entitled in respect of such capitalisation, and any such agreement shall be effective and binding on all those Members.

32. GOVERNANCE

The Board shall include a report with respect to corporate governance in its annual reports as required from time to time by the Member(s).

33. WINDING UP

If the Company is wound up (whether voluntarily or compulsorily) subject to the provisions of the Applicable SOE Legislation:

- 33.1 the assets remaining after payment of the debts and liabilities of the Company and the costs of winding up shall be distributed amongst the Members in proportion to the numbers of shares respectively held by each of them, subject to the rights of any Members to whom shares have been issued on special conditions and subject to the liability, if any, of Members for unpaid Capital or premium;
- 33.2 the liquidator, with the authority of a special resolution, may divide amongst the Members in specie or kind the whole or any part of the assets and whether or not those assets consist of property of one kind or different kinds; and
- 33.3 If, despite diligent enquiry, the liquidator cannot locate any Member, he shall tender to deposit in the National Revenue Fund that Member's share in the winding up (undertaking for that purpose to realise any assets included therein). If any such tender is refused by the Master of the High Court, the liquidator shall distribute such share amongst the remaining Members in proportion to the number of shares held by them, subject to the rights of any Member to whom shares have been issued on special conditions.

34. INDEMNITY

Every Director, manager, secretary and other officer of the Company except for its auditor shall be indemnified out of the Company's funds

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against all liability incurred by him in connection with the performance of his functions and/or by virtue of his status as a Director, manager, secretary or other officer (excluding the auditor of the Company) in defending any proceedings (whether civil or criminal) in which judgement is given in his favour or in which he is acquitted or in connection with any matter in which relief is granted to him by the Court in terms of the Companies Act.

35. NOTICES

35.1 The Company may give or send to any Member, Beneficial Owner, Director and/or member of a committee any notice or other document by delivery, post or (except for a share certificate) by telefax, e-mail or other electronic communication insofar and in such manner as is permitted by law including, without limitation, by way of notification to the Member, Beneficial Owner, Director and/or member of a committee or its publication on a website.

35.2 Any Member, Beneficial Owner, or Director shall be entitled to have a notice served on him at any address outside the Republic of South Africa; provided that if on three consecutive occasions a notice to such Member addressed to that address is returned undelivered, such Member shall not thereafter be entitled to receive notices from the Company until the Member gives notice in writing to the Company of a new address for the service of notices. For this purpose, a notice sent by post shall be treated as returned undelivered if the notice is sent back to the Company or its agent and a notice sent by electronic communication shall be treated as returned undelivered if the Company or its agent receives notification that the notice was not delivered to the address to which it was sent.

35.3 Every notice or document sent to:

35.3.1 a Director or other committee member at his address shown in the register of Directors or committee members, as the case may be, or in the case of an electronic communication any telefax number, e-mail or other electronic communication address provided by the Director or other committee member for the purposes of Article 35.2, whether or not such address is included in the relevant register;

35.3.2 a Member at his address shown in the register of Members or in the case of an electronic communication any telefax number, e-mail or other electronic communication address provided by the Member for the


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purposes of Article 35.2, whether or not such address is included in the register of Members; or

- 35.3.3 a Beneficial Owner that is not a Member, at the address which has been disclosed to the Company in respect of that Beneficial Owner and which has been recorded in the Company's relevant register of such disclosures or any telefax number, e-mail or other electronic communication address provided by the Member for the purposes of Article 35.2, whether or not such address is included in the register of Members,

shall be deemed to have been received:

- (a) If it is delivered by an employee or officer of the Company, on the date on which it is so delivered;
- (b) If it is delivered by way of a courier or delivery service provider, 48 hours after it is given to the courier or other delivery service provider for delivery and in proving the giving of the notice/document by courier or delivery service it shall be sufficient to prove that the notice/document was properly addressed and given to the courier or delivery service provider;
- (c) If it is sent by post, 48 hours after it is so posted and in proving the giving of the notice/document by post, it shall be sufficient to prove that the letter containing the notice/document was properly addressed and posted; and
- (d) If it is sent by e-mail, telefax or other electronic communication, 24 hours after the e-mail, telefax or other electronic communication containing same is sent (despatched) to the relevant e-mail address, telefax number or other electronic address and in proving the giving of the such notice/document it shall be sufficient to prove that it was sent (as opposed to received) to the proper e-mail address, fax number or other electronic communication address and a printout of the electronic confirmation of despatch of the telefax, e-mail or electronic communication shall constitute conclusive proof that it was sent, unless the contrary is proved.

- 35.4 When a given number of days notice or notice over any period is required to be given, the date of service or posting, as the case may be, and the date on which it is deemed to be received shall not be counted in such number of days or period.

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35.8 Whenever a notice is to be given in any of the aforementioned methods, the notice may be given by the Company to the Persons entitled to a share in consequence of the death or insolvency of a Member or any other event giving rise to the transmission of the shares by law (including, without limitation, any executor, trustee or administrator), at the address (including fax number, e-mail or other electronic communication address) supplied for that purpose by the Persons claiming to be so entitled with reference to the name of such representative, the deceased or insolvent Member or the title of the representative or any like description. Until such an address has been so supplied the Company may give the notice in any manner in which the same might have been given if the death, insolvency or other event giving rise to the transmission had not occurred. A notice given to the registered Member shall be binding on all Persons claiming on the Member's death, insolvency or other event giving rise to the transmission of the Member's interests.

35.6 The accidental omission to give any notice of a General Meeting or of a meeting of Directors to or the non-receipt of any such notice by any Member or Director, as the case may be, shall not invalidate any resolution passed at any such meeting. Without limitation to the foregoing, subject to the Companies Act, the omission to give any notice of a General Meeting to a Beneficial Owner that is not a Member or the non-receipt of any such notice by such a Beneficial Owner shall not, under any circumstances whatsoever, invalidate a General Meeting nor any resolution passed at such meeting, whether the omission is accidental or otherwise.

35.7 The Directors shall in their discretion, in addition to the notice referred to in Article 35.2, be entitled, but not obliged, to publish the notice by advertisement in any newspaper(s) they consider appropriate.

35.8 Any notice or other document may be served or delivered by the Company by reference to the register as it stands at the close of business on such day as the Board shall determine not being more than 21 (twenty one) days before the date of the despatch of the notice. No change in the register after such time shall invalidate a notice or other document so served or delivered.

36. BRANCH REGISTER

The Company shall be entitled to cause a branch share register to be kept in any foreign country and the Directors may make such provisions as they may think fit respecting the keeping of any such branch register(s).


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37. ACQUISITION OF SHARES AND STOCK

The Company may (subject to the Applicable SOE Legislation) by special resolution of the Members approve the acquisition by the Company of shares and stock issued by it and/or its holding company, in accordance with the requirements of the Companies Act. The Company agrees (subject to the Applicable SOE Legislation) that any of its subsidiaries may acquire shares and stock in the Company, only subject to compliance with the requirements of the Companies Act and the approval of the Members of the Company by resolution passed *mutatis mutandis* as if it were a special resolution.

38. LOCAL COMMITTEE(S)

38.1 All appointments of alternate committee members or substituted agents by members of any local committee or agents made in accordance with the provisions of the preceding Article shall be subject to the approval of the remaining members of the local committee or agents and shall be reported forthwith to the Directors. No local committee members or his alternate or agent or substituted agent shall be obliged to be a Member of the Company.




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39. DIRECTORS' REPORT TO DISCLOSE RESOLUTIONS PASSED BY SUBSIDIARY COMPANIES

If the Company is a holding company as defined in the Companies Act, the Director's report attached to each annual balance sheet issued by the Company pursuant to the Companies Act shall disclose full details of all special resolutions and resolutions passed at General Meetings of the Company's subsidiaries since the date of the Directors' report attached to the previous annual balance sheet of the Company.

40. COPIES OF ANNUAL ACCOUNTS AND REPORTS TO BE SENT TO MEMBERS

The Directors shall cause the required number of copies of every income statement, balance sheet and group accounts of the Company, together with the reports of the Directors and auditors, all as required to be laid before a General Meeting, to be sent to Members at least 21 (twenty-one) days before the General Meeting at which they are to be considered.




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Annexure “2”



FINANCE, RISK AND INVESTMENT COMMITTEE

To:	FRIC
From:	GENERAL MANAGER MERGERS AND ACQUISITIONS
Date:	13 February 2010

TERMINATION OF FLIGHTS FROM JOHANNESBURG TO MUMBAI

PURPOSE

In July 2009 a set of profitability targets for JNB – BOM was agreed upon and a rescue plan was implemented with the aim of turning the route profitable. Multiple initiatives were undertaken by the commercial departments at SAA without success. The purpose of this submission is to seek a resolution from FRIC approving, and recommending to SAA Board of Directors, the termination of SAA's services from Johannesburg to Mumbai.

BACKGROUND

Flights from Johannesburg to Mumbai were launched back in March 1995 and made a profitable route network contribution for many years. In 2006 the profitability of the route came under pressure due to the massive increase in capacity from Middle Eastern carriers, in particular Emirates, into both the South African and Indian markets. Increased traffic rights into the South Africa market gave these carriers an opportunity to utilise their extensive and growing route network into India to carry traffic that flew on SAA between South Africa and India. In April 2006 SAA reduced the number of flights from a daily service to four times per week. In Nov 2006, the Mumbai route was increased to five flights per week, however in April 2008 it again had to be reduced to four flights per week due to consistently failing to deliver a profit.

The Middle Eastern carriers have continued to add capacity into South Africa and India. The most recent example being Qatar's new flight to Bangalore, starting Feb 2010 and the Emirates flight to Durban which was launched in Oct 2009. Flights to the Indian market from the respective hubs of the three big Gulf carriers, Emirates, Etihad and Qatar, increased by more than 250% between 2006 and 2010, with the number of seats flown more than tripling. Similarly, capacity introduced into the South African market by the same carriers more than doubled during this period. In addition to the increased number of flights into Johannesburg, new destinations such as Cape Town and Durban were added, which further undermined SAA's Indian route.

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The Mumbai flight over the last two years has not delivered consistently profitable results at a route profit level. It has however contributed substantial revenue to the SAA network by connecting traffic beyond Johannesburg. The load factors on the route together with the average fares have not been enough to cover SAA's cost base. India is a price sensitive market and while lowering fares to compete with the massive capacity induction by the Middle Eastern carriers resulted in improved load factors, it did not yield profits as the average fares have continued to be under pressure as these carriers continue to increase capacity. The route has also seasonal troughs where the load factor is low.

Moreover, the lack of a suitable partner airline based at Mumbai to help SAA feed and de feed traffic from and to other cities in India has also resulted in a loss of connecting traffic and put SAA at a disadvantage to the Middle Eastern carriers. In order to correct this shortcoming, SAA did initiate discussions with Jet Airways and Air India culminating in a code-share relationship with Air India in mid 2009. However, the Air India partnership has failed to sufficiently benefit SAA due to Air India's internal problems such as an ongoing merger and issues related to their IT systems. To complicate the issue further, Mumbai Airport is going through major renovation increasing minimum connecting times (MCT) and throwing connections out of synchronisation. The airport is far from an ideal connecting hub and the situation is only expected to improve in 2012.

Cancelling the loss making services from Johannesburg to Mumbai will allow SAA to redeploy the aircraft on more profitable routes. SAA currently does not have aircraft to operate a planned frequency increase to Sao Paulo and/or Accra and so a redeployment of capacity to onto these routes is likely.

MOTIVATION

The motivation for terminating the Johannesburg – Mumbai flight is to improve SAA's profitability and close a route that has been consistently unprofitable. The Johannesburg – Mumbai route has sustained a loss at a contribution level 4 in 13 of the last 15 months. Cumulative losses over the last 12 months equal R 36.5 million. Flights from Mumbai to Johannesburg do contribute a significant amount of connecting traffic and cargo. The connecting revenue benefits predominantly SAA's African and South American route network.

In order to maintain a presence in the Johannesburg - Mumbai market and to retain the majority of the connecting revenue, SAA is considering entering into a code share agreement with Jet Airways which has announced its intention to commence a daily flight between Mumbai and Johannesburg from April 2010. SAA believes that this code share relationship will help SAA retain its connecting traffic from the India market to Africa and South America. SAA's bank structure at JNB is structured so that we are globally competitive on the India –African and South America traffic

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flows. This, combined with Jet Airways' extensive Indian network out of Mumbai will help us in keeping and probably growing the connecting traffic on our network to Africa and to South America in particular.

Moreover, we intend to use the freed up aircraft time to add services to profitable markets such as Brazil and Ghana. It is SAA's intention to add flights from Johannesburg to Brazil and Ghana, both of which are profitable. Terminating the Indian route would therefore improve the profitability of SAA's network in a situation where SAA's widebody fleet is static.

COUNTER PARTY

Sales and marketing

DPE and DOT for notification

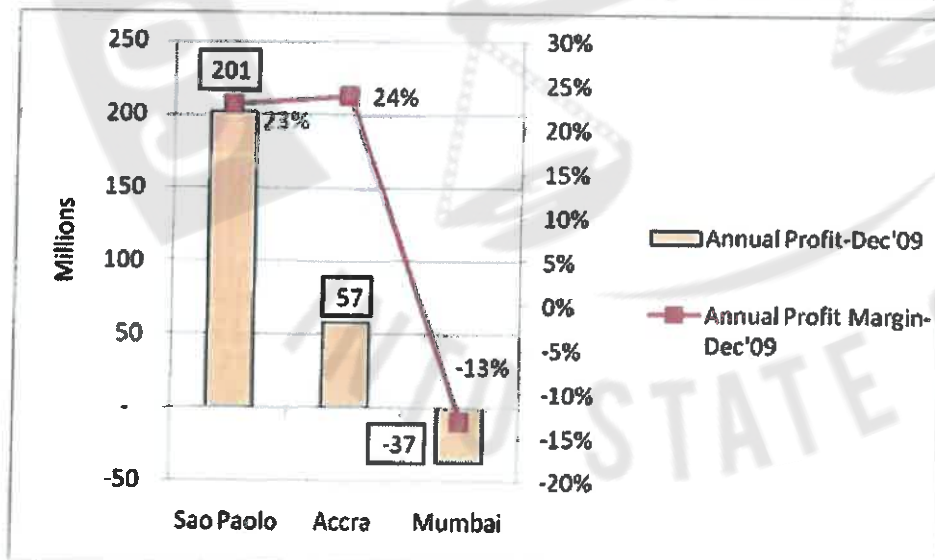
FINANCIAL IMPLICATION

This network change aims to improve the overall profitability of SAA's route network. Terminating the Johannesburg – Mumbai flight would free up one A340-200 aircraft four days per week. The A340-200 aircraft would be deployed mainly on the growing Johannesburg – Sao Paulo route as well as on the Johannesburg- Accra route:

- Two flights per week from Johannesburg to Sao Paulo. These flights will be operated in addition to the existing daily frequency on an afternoon schedule reducing connection times between the Hong Kong and Brazil markets on the return leg. In addition, it will also connect many African markets that does not connect at present.
- Two additional flights per week from Johannesburg to Accra. Bilateral rights and slots for to allow these additional flights between South Africa and Brazil & Ghana are already in place.

The table below illustrates the current profitability on these routes:

Figure 1: Contribution Level 4 Profitability of Sao Paulo, Accra and Mumbai



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An analysis of the proposed new schedule forecasts a significant profit improvement from this network change as illustrated in table 2 below. SAA will avoid the current loss incurred on the Johannesburg – Mumbai route. In addition, SAA is forecast to generate a calculated additional R 84 million per annum on its network by redeploying the aircraft.

Figure 2: Annual Impact (in ZAR) of Network Changes Dec 2009 – Dec 2010

Route	Number of Flights	Load Factor	Net Pax Revenue	Cargo Revenue	Operating costs	Operating Profit	Other Costs	Contribution Level 4
Johannesburg-Mumbai	4	65%	228,977,183	49,790,116	266,354,900	12,412,399	48,965,569	-36,553,170
Johannesburg-Sao Paulo	2	70%	178,068,800	8,903,440	132,408,640	54,563,600	11,076,959	43,486,641
Johannesburg-Accra	2	62%	134,569,760	16,148,371	98,305,584	52,412,547	11,680,908	40,731,639
Total	4		312,638,560	25,051,811	230,714,224	106,976,147	22,757,867	84,218,280

These changes have further benefits, such as increased network benefit with passengers connecting onto other flights in the SAA network. Increasing capacity on Sao Paulo also acts as an inhibitor to TAM intentions to enter the route. These benefits have not been quantified.

There is a possibility that SAA will be liable for an amount of up to R20 million to its GSA in India, Interglobe, on withdrawal from the route. A legal opinion on this has been requested but at reading the agreement it seems more likely that this amount will be between R0 and R5 million. We hope to have a more firm idea at the time of the meeting on this item but even in the worst situation, it will still be beneficial for SAA to proceed with the termination of our own flights and entering into a codeshare.

PFMA IMPLICATION

Notification to DPE and DOT for termination of a route needs to be done.

RECOMMENDATION

It is recommended that FRIC approves and recommends to SAA Board of Directors that SAA terminates operations from Johannesburg to Mumbai subject to concluding an appropriate codeshare agreement with Jet Airways and being able to re-accommodate passengers with forward bookings.


The entering into a codeshare agreement with Jet Airways will be subject to a settlement of a dispute of ± USD2 million outstanding since the termination of the leases of 3 x A340-300 aircraft from SAA to Jet Airways. Some progress has been made in this regard but entering further cooperation agreements without resolution on this aspect is not recommended.

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SIGNATURES:**1. Compiled and recommended by:**

Jan Blake

General Manager Mergers & Acquisitions


Signature**2. Approved by Exco:**

Chris Smyth

Acting Chief Executive Officer


Signature

Annexure “2.1”



CONFIDENTIAL

Resolution No/
For Attention

submit a report to the Board of Directors with a strategy on how to maximise shareholder value.

J Blake

4.2 Termination of Flights from Johannesburg to Mumbai

Mr Blake presented the submission seeking approval for the termination of SAA's services from Johannesburg to Mumbai. Mr Blake informed the meeting that in July 2009 a set of profitability targets for JNB – BOM was agreed upon and a rescue plan was implemented with the aim of turning the route profitable. Multiple initiatives were undertaken by the commercial departments at SAA without success. Flights from Johannesburg to Mumbai were launched in March 1995 and made a profitable route network contribution for many years. In 2006 the profitability of the route came under pressure due to the massive increase in capacity for Middle Eastern carriers into both the South African and Indian markets. The Middle Eastern carriers have continued to add capacity to South Africa and India.

Flights from Mumbai to Johannesburg contribute a significant amount of connecting traffic and cargo. In order to maintain a presence in the Johannesburg – Mumbai market and to retain the majority of the connecting revenue, SAA was considering entering into a code share agreement with Jet Airways which had announced its intention to commence a daily flight between Mumbai and Johannesburg from April 2010.

The meeting reviewed the submission and discussed the matter at length. Some members expressed discomfort regarding the proposed termination of the Johannesburg/Mumbai route. Some of the concerns raised were :

- The proposal seemed to look at one loss making route in isolation. Members indicated that they would have expected to be provided with a more inclusive picture of all loss making routes, and then requested to make a decision having taken all aspects and all routes in perspective;
- The proposal was based on a concluding a code share agreement with Jet Airways which had announced intentions of starting a daily flight between Johannesburg and Mumbai. Consequently the meeting felt that a proposal to close the route may be premature at this stage;
- Whether other carriers other than Jet Airways had been considered, for example Air India, Indigo etc. Also Jet Airways financial strength could not be conclusively confirmed; and
- Whether all alternatives for onward flow had been reviewed exhaustively.

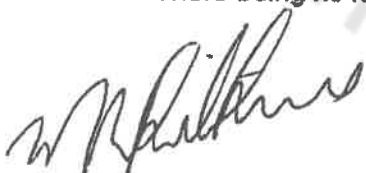
RESOLVED that:

The submission be submitted to the SAA Board for consideration, taking into account the concerns raised by FRIC as indicated above.

2010/02/02

5 CLOSURE OF THE MEETING

There being no further matters for discussion the Chairman closed the meeting.



CHAIRMAN

Date:

COMPANY SECRETARY - PRIVATE

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Annexure “3”



Overall Analysis Of Code-Share Agreements In Global Markets

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 NOV

Code sharing on international markets has become a significant opportunity for airlines which has grown rapidly in recent years across the airline industry. Considering the impossibility for one airline to provide customers demand of seamless service and from anywhere to anywhere service on its own aircraft, code sharing appears to be a reasonable and practical alternative. In order to meet customer demands at feasible costs, airlines started to seek commercial partners to contribute them provide the required network and service coverage. Since, cross-border mergers, which are ordinary in other industries, may be prohibited for airlines in many jurisdictions, alliance relationships between airlines have extended to satisfy an obvious need for network cooperation, as a close substitute for mergers.

In general, code share is an agreement between two airlines which enables one airline to put its two-letter identification code on the flights of another airline. Accordingly, a flight operated by one airline is jointly marketed in computerised reservation systems as a flight by one or more other airlines.

Although there is no exact definition in Montreal Convention, Guadalajara Convention defines that, parties of code share agreement is divided into two parts as *operating carrier* and *marketing carrier*. The airline that actually operates the flight and the one providing the plane, the crew and the ground handling services is called the operating carrier. The company or companies that sell tickets for that flight but do not actually operate it are called marketing carriers.

Types of Code-Sharing

Code-share agreements can be divided into three major types:

1. *Parallel operation on a trunk route*

At this kind of code share agreement, two carriers both operate the same sector; give its code to the other's operated flights. An example of this is flights between Paris and Milan, operated by Air France and Alitalia, which have each others' codes as well as their own.

2. *Unilateral operation on a trunk route*

For unilateral operation, a carrier puts its code on a sector operated by another carrier, but not by itself, and not connecting to one of its own operated flights. For example, Delta puts its code on Paris-Boston, operated by Air France.

3. *Behind and beyond route (connecting to a trunk route service)*

Behind and beyond routes means, a carrier puts its code on sectors that is not operated by itself but operated by another carrier and provides connections with its own operated services. The classic example of this sort of code-share is, for example, when British Airways sells a journey from London Heathrow to Chicago, via Washington, with the US domestic sector operated by United Airlines. However, because of the existence of a code-share agreement, they can nevertheless be distinguished from a traditional interline journey, on which passengers simply take connecting flights designated only by the code of the operating carrier.

Advantages for the Airlines

- **Achieve network extension and better connectivity** – Code-sharing allows airlines to offer their passengers a wide range of travel options which can extend beyond their own network and route structure. The advantage of code share agreements for airlines is to broaden the offer that airlines can make to customers in terms of the number of destinations and the flight timings that airlines may offer potential customers, without the costs and difficulties involved in additional investment in equipment or in mergers with other airlines.

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► **Spread risk and facilitate extra presence** – Considering the perspective of an airline business, code-share agreements enable airlines to spread risk and facilitated extra presence without necessarily the need to invest in new aircraft for their fleet. Code-share agreement also increases the presence and awareness of an airline in global markets where it would otherwise have no profile. Accordingly, it enables the airlines to facilitate the marketing of its services and helping its seats to be sold via a marketing carrier which may be much better known in that market. Code-share agreements enable an airline to market a flight operated by another carrier and of course airlines are only willing to use their brand in this way if they are confident that the other carrier is safe and has a suitable product. Therefore, the presence of a code-share agreement can give confidence to both customers and distribution channels that journeys involving the partner can be sold with the expectation of a good overall level of service, in terms of suitability of the product and seamlessness of ticketing and flight connection arrangements.

Passenger Liability

Passenger liability on code-share agreements is regulated under Guadalajara Convention Article 2. Accordingly, if an actual carrier performs the whole or part of carriage which, is governed by the Warsaw Convention, both the contracting carrier and the actual carrier shall be subject to the rules of the Warsaw Convention, the former for the whole of the carriage contemplated in the agreement, the latter solely for the carriage which he performs. Any complaint to be made or order to be given under the Warsaw Convention to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Thus, in case of a passenger claim, charges can be either against marketing carrier or operating carrier.

Code share agreements may cause some issues in terms of passenger liability. In this regard, the problem is most likely to emerge where the states in which the airlines are registered are not signatories to the Guadalajara Convention. For these airlines, code share flights are regarded as successive carriage flights under the Warsaw Convention and passenger liability therefore rests with the airline operating the flight. Problems may occur where the operating carrier's contractual terms on liability differ from those of the code share partner (for example, limits on compensation). This issue is unlikely to arise where the code share partners are signatories to the Guadalajara Convention.

Benefits for the Passengers

There are several benefits appeared with the code-share agreements for passengers. As a brief list, coordinated schedules for easier connections, more convenient connecting times and arrangements for making connections, the ability to check your baggage and obtain a boarding pass to your final destination, more extensive international networks and easy way to reach them, the resources of two carriers to deal with operational problems and disruption arising, improvement of product/service quality of one of the partners can be counted.

Conclusion

Using code-share agreements and alliances between airlines on international markets have become a dominant feature of the airline industry. The ultimate motivation for airlines to enter into code-share agreement is commonly the opportunity to cite greater network extent beyond their route and greater customer reach coming with market awareness and brand recognition. Therefore, code-share agreements between airlines on international market, with its various features, enable both airlines and passenger enters into a mutually advantageous era to reach global and convenient way of transportation



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Annexure “4”





MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag 210, Mowbray 2008 Tel: 011 431 1111 Fax: 011 431 1121
Private Bag 19779, Cape Town 8001 Tel: 021 463 6376 Fax: 021 463 2344 (ext. 111)

Ms C A Carolus
Chairperson
South African Airways
Private Bag X13
OR Tambo International Airport

Tel: 011 978 2952
Fax: 011 978 3881

Dear Ms Carolus

MEETING WITH MR NARESH GOYAL (JET AIRWAYS) ON 31 AUGUST 2010

With reference to our telephonic discussion and your recommendation that I hold off on meeting with Mr Naresh Goyal of Jet Airways on the basis that there are various issues that need to be resolved I have adhered to your request and would appreciate your urgent reply in relation to the following:

- What are the matters that need to be resolved, the financial impact on the company and when they are expected to be resolved?
- In what way my meeting with Mr Naresh Goyal would impact such matters?
- What are SAA's financial results, operational and traffic statistics on the route between South Africa and India for its 2009 and 2010 year?
- What is SAA's competitive position and plans on the route between South Africa and India going forward?
- What are the forecasted results for SAA on this route in the medium to long term, taking current competitive conditions into account?
- What is SAA's prognosis of the possible impact of implementing the tri-lateral accord between India, Brazil and South Africa?
- What are the existing relationship between Jet Airways and SAA?
- In what way does SAA expect the relationship between Jet Airways and SAA to develop in future?

I trust that you will find the above in order

Yours sincerely


MS B HOGAN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 1 September 2010

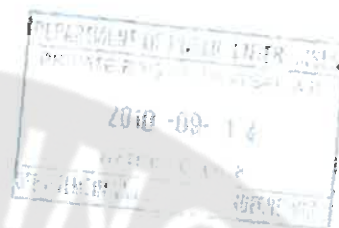
Annexure “5”



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1. 姓名: 李小明
 2. 性别: 男
 3. 年龄: 25

Ms Barbara Hogan MP
Minister of Public Enterprises
Department of Public Enterprises
Private Bag X15
Hatfield
0028
Fax: 012 431 1039



Meeting with Mr Naresh Goyal (Jet Airways) on 31 August 2010

SAA has and continues to maintain successful airline co-operation initiatives in the form of Alliance partnerships, code sharing arrangements and joint ventures. When embarking on such initiatives we always strive to achieve mutual benefit to SAA and our partners in such endeavours. A recent point in case is our successful co-operation agreement with Jet Blue Airlines in the United States which has delivered substantial profitability improvements in our route to New York as it allows us to expand our network reach into the USA.

I am advised by the CEO Ms Mzimola that she met with Mr Naresh Goyal on 1 September 2010 during which the principle of mutual benefit was agreed upon. These discussions will continue on Friday 3 September 2010. It is important to note, however, that SAA has been informed that Jet Airways is subject to a partnering embargo with STAR Alliance member carriers from the Indian Government until matters related to Air India's membership of the

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Figure 1. The effect of the concentration of the inhibitor on the rate of polymerization.

Source: <http://www.irs.gov/efile/efiletrans.htm>

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5th Alliance is desired. According to agreements reached with Jet Airways, it is subject to them to getting lifted.

With respect to the IBSA Accord, to date no carrier operates any of the IBSA frequencies as there are sufficient frequencies available under the BASA's for the route.

The main benefit of the IBSA frequencies is that it allows Indian and Brazilian carriers to conduct 5th freedom flying from their home country via South Africa to India or Brazil. South African carriers do not enjoy the same benefit. What it means in practice is that Jet Airways could fly to Johannesburg and then uplift RSA passengers and fly them to Sao Paulo in direct competition with SAA or a Brazilian carrier on the JNB-SAO route. Therefore we do not believe that there is any benefit in the IBSA Accord to SAA.

The risk to SAA, however, is that any Indian carrier to Johannesburg may choose to operate JNB-SAO in opposition to SAA.

With respect to the financial, operational and traffic statistics on the route:

Financial results	Total Route Revenue applicable (SAA & cargo)	FYE 09/10 12 months to March 2010	FYE 10/11 April to July 2010
		ZAR277 555 596	ZAR271 764 379
	Route Operating profit after route costs	ZAR915 115	ZAR207 755 592
	Route Operating profit after overhead ownership	ZAR248 972 503	ZAR11 301 517
	Route Net Profit (after overheads)	ZAR61 122 515	ZAR36 116 592
	Operating passenger revenue	ZAR30 760 123	ZAR15 294 011
Operating costs	Revenue passengers	12 253	12 913
Weight	Load factor	65%	67%
Yield	Yield	0.45	0.43
Passenger RASK	Passenger RASK	0.31	0.22
Operating CASK	Operating CASK	0.35	0.29

A change in aircraft type from the A340 200 to the A330 200 is being considered which would result in a saving of 15% of the total operations cost which has the potential of turning the route profitable, provided the assumption on fuel costs (USD80/barrel) stand. Additionally a partner in India is being sought to improve connections into India. Discussions with IndiGo and Kingfisher Airlines have been initiated in this regard.

PSM

DPE calculations on Route Statistics provided by SAA
Analysis of Johannesburg - Mumbai Route

Statistics	A Year 2010	B 4 Months Apr to July 2010	C Projection of full 2011 Year based on 4 Months Apr to July 2010	D % Diff C to A
Revenue	277,553,596	73,764,371	221,293,113	-20%
Route operating profit	975,118	(20,779,812)	(62,339,436)	-6493%
Route operating profit after aircraft ownership	(38,972,803)	(31,801,594)	(95,404,782)	145%
Route Net Profit (after overheads)	(63,122,945)	(56,738,502)	(170,215,506)	170%
Connecting Pax revenue	36,760,423	15,294,011	45,882,033	25%
Margins				
Route operating profit	0%	-28%	-85%	(241.55)
Route operating profit after aircraft ownership	-14%	-43%	-129%	8.21
Route Net Profit (after overheads)	-23%	-77%	-231%	9.15
Connecting Pax revenue	13%	21%	62%	3.70

Calculation of Projected Losses			
Revenue	221,293,113		221,293,113
Margin Route	-23%		-77%
Projected Loss	(50,327,840)		(170,215,506)

Revenue Pax	72,993	17,973	53,919	-26%
Load Factor	69%	52%		
Yield	0.45	0.43		
RASK	0.31	0.22		
CASK	0.36	0.39		

Calculation of Impact of 15% operational Cost Saving

Revenue	277,553,596	73,764,371	221,293,113
Route operating profit	975,118	(20,779,812)	(62,339,436)
Operating Costs	276,578,478	94,544,183	283,632,549
15% saving in operating cost	41,486,772	14,181,627	42,544,882
Route Net Profit (after overheads)	(63,122,945)	(56,738,502)	(170,215,506)
Net impact on SAA's submission	(21,636,173)	(42,556,875)	(127,670,624)
Calculated Route Net Profit (after overheads) Margin	-8%	-58%	-58%

PM

Annexure “6”



STATEMENT TO THE COMMISSION OF INQUIRY INTO STATE CAPTURE

I, the undersigned,

Sandra Julie Hester Coetzee

State as follows:

Introduction and Background

1. I prepared this statement at the request of the Commission of Inquiry into State Capture ("the Commission") to assist the Commission in the discharge of its mandate. This statement is made to the best of my recollection of events during my tenure at SAA as may be relevant to the terms of reference of the Commission. My recollection of exact timelines and/or dates is limited.
2. I qualified with a BLC LLB in 1984 and was admitted as an Advocate of the High Court in 1985. Before joining SAA, I served the Department of Public Enterprises ("the DPE") in various capacities between 2005 and 2010, namely, Deputy Director-General: Legal, Governance and Risk, Chief Investment and Portfolio Manager and Acting Director-General. In 2010, I joined SAA in the capacity of General Manager: Legal, Risk and Compliance until my resignation in October 2012.

Shareholder Governance Approach

3. During my tenure at the DPE the governance approach was premised on accountability and compliance. To ensure that neither the Executive Authority (the Minister of Public Enterprises) nor the Accounting Authority (the Board of Directors) of State-Owned Enterprises ("SOEs") were compromised in the discharge of their respective oversight and fiduciary duties and responsibilities in terms of Chapters 6 and 7 of the Public Finance Management Act, Act 1 of 1999 ("the PFMA") engagements between the Minister and the Board of Directors were structured around the prescribed corporate planning, performance measurement, reporting and required approvals framework of the PFMA.
4. In support of the Minister's duty to ensure compliance with the PFMA and the financial policies of the National Treasury, the DPE developed a portfolio-wide electronic risk-based performance dashboard that tracked financial, operational and governance performance of the SOEs with year-on-year and quarter-on-quarter comparisons. Discussions with SOEs in respect of corporate plans and quarterly performance reporting were followed up with direction in writing from the Minister. In most cases, the National Treasury was also invited to these discussions and the Minister of Finance would also require, in writing, particular matters to be addressed. In the case of SAA, monthly performance monitoring meetings were also introduced as a condition to guarantee support from the National Treasury. These discussions were robust and guiding whilst respecting the statutory prescribed accountability levels.

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5. Where matters arose outside of the aforementioned governance framework as a consequence of National Government's objectives or through third-party submissions, these matters were referred, in writing, to the relevant Boards of Directors for consideration and report back.
6. With regard to board appointments, the DPE maintained a database of potential candidates for board positions with selection considerations including demographic and gender representation, demonstrable knowledge and experience in the areas where SOEs require strengthening in performance and the number of board positions already held. Prior to recommending candidates for board appointments, the relevant sector team and the legal, governance and risk team conducted an assessment of the skill set required to address the challenges faced by a particular SOE and compiled a list of potential board members along with their credentials for discussion and consideration by the Minister. After the evaluation by the DPE and the Minister a final list for recommendation to Cabinet was compiled. The same procedure was followed in the case of the 2009 appointment of the Board of Directors of SAA. This Board was demographically and gender representative and offered demonstrable expertise in the areas where SAA's performance required attention.
7. I am not aware of any changes in the governance approach of the Minister of Public Enterprises, Ms Barbara Hogan, towards SAA after my departure from DPE.
8. Over time, during my tenure at SAA, I became aware of events that may be considered a change in governance approach from the new Minister of Public Enterprises, Mr Gigaba. These events raised concern insofar as (a) the matters raised were, in the ordinary course of business, within the fiduciary duty of the Board of Directors and/or the duties of management, (b) proffered the interest of third parties and (c) occurred outside the governance framework as prescribed by the PFMA and were not reduced to writing. Where my advice on addressing these governance concerns were sought, I recommended that clarification and/or instruction be respectfully sought from the Minister in writing.

Relationship between Board of Directors and Management of SAA 2010-2012

9. The working relationship between the Board of Directors and management of SAA during the period 2010-2012 was structured around a new Delegation of Authority premised on transparency, accountability and integrity. There was a clear message to management that it will not be "business as usual". Costs had to be reduced and effectively controlled and a strategy for revenue growth had to be secured in a compliant manner.
10. Among others, the Delegation of Authority set value and materiality thresholds for procurement approvals. In addition, through the establishment of a Board Sub-Committee on procurement, special attention was paid to weaknesses and improvements in the maturity schedule of procurement practices. Areas of attention included a clear business rationale relevant to delivery on the corporate plan (including budget), compliance and value for money.

Procurement

11. Procurement requirements were initiated and defined by business units while bid submissions were evaluated by a cross-functional team representing various departments in the company. All procurement submissions had to, at a minimum, contain particulars of the procurement,

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evaluation results and a recommendation for approval were escalated in accordance with the DoA to the ultimate level of approval. Original bid documents were not included in the escalation process to protect the integrity of the evaluation process and confidentiality obligations towards bidders.

12. From the bottom to the top within the company, the hierarchy of procurement approvals were: the Chief Procurement Officer, the Bid Adjudication Committee, the Chief Executive Officer (CEO), the Procurement Sub-Committee of the Board and the Board of Directors.
13. In addition, in terms of to section 54(2) of the PFMA, SAA was required to seek approval from the Minister for significant and material transactions agreed to in advance between the Minister and the Board of Directors. Pursuant to section 54(2) relevant particulars of such procurement transactions were submitted to the National Treasury and the Minister for approval before any bid award of such transactions could be confirmed.

The Fleet Committee

14. A key area of concern within the airline was the lack of integrated fleet planning and management to support efficient commercial operations and meet safety requirements. The CEO, Ms Siza Mzimela, established a Fleet Committee comprised of senior executives representing Commercial, Flight Operations, Finance, Procurement, Cargo, Legal, Risk and Compliance and subsidiaries SAA Technical and Mango. The committee was chaired by the General Manager: Commercial.
15. Among others, the committee was charged with the determination of fleet requirements to implement the growth strategy contained in the corporate plan and the resolution of the long-standing legacy contracts for the purchase of twenty A320 aircraft. This gave rise to a Request for Proposals (RFP) for wide-body aircraft and negotiations to extricate SAA from the legacy A320 contract obligation in a manner that would terminate pre-delivery payments and claw back pre-delivery payments already made and enable access to contemporary aircraft options. Substantial progress was made in both these matters by the time that I left SAA.
16. The results of the RFP evaluation were presented to and approved by the Board of Directors and further presented to the DPE for consideration and approval by the Minister. I did not participate in the evaluation of the RFP bid submissions. Regarding the A320 contract, in principle agreement was reached to swop-out requirements for contemporary aircraft matching SAA's fleet requirements, the immediate sale and option for lease back on time-scales that would enable more frequent fleet renewal and the pay back of past pre-delivery payments.

The Mumbai Route

17. On occasion when Ms Mzimela was called to attend a meeting at the Minister's office, the purpose at the time not known to me, I was asked to take a call from a gentleman from Jet Airways who wanted to speak to the CEO. As the gentleman insisted speaking to Ms Mzimela, her assistant requested that I take the call as she was still at the Minister's office. I do not recall the gentleman's name. He indicated that he was leaving the Minister's office and would be on his way to SAA's offices to sign an agreement in respect of the Mumbai route. I indicated that I was not aware of such an agreement or a decision by the Board of Directors in that regard and

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would have to consult Ms Mzimela on the matter and revert. Ms Mzimela was tied up at the Minister's office for a while and the gentleman continued to call to arrange for the signature of the agreement on the same day. I then obtained the gentleman's email address and offered to revert to him in writing once I had received instruction. Upon Ms Mzimela's return from the Minister's office, I briefed her about the call and she informed me of events at the Minister's office. I addressed an email to the gentleman with copy to the General Manager: Commercial requesting that he sends us further particulars of their proposal and a copy of the agreement and indicated that the matter had been referred to the General Manager: Commercial as the appropriate executive to address the matter. In reply, I did not receive further particulars of the agreement or the agreement itself but rather concern about not proceeding with the signing of the agreement. Thereafter, I did not have any further involvement with the matter.

The New Age Procurement

18. During my tenure at SAA, I served as the Chairperson of the BAC, for a term after which I recommended that, due to other pressing matters, I be replaced by one of the lawyers in the legal unit. One of the matters presented to the BAC was the approval of a confined procurement of the New Age daily newspaper. The meeting of the BAC was on 22 February 2011. Various considerations were raised during the debate at the BAC among which were cost and justification for the procurement within the context of a cost containment commitment, implications for flight operations and compliance with BAC submission requirements. The BAC did not approve the procurement but referred the matter back to the cross-functional team to address the concerns raised by the BAC before a final decision could be taken. To my knowledge, not all concerns raised by the BAC were addressed but a cost per unit reduction in price for a limited test period was secured. I did not sign the submission to approve the procurement as not all the BAC concerns were addressed.
19. I received some documents relating to this matter on 29 November 2018. Except for the meeting on 22 February 2011, I was not involved in any of the discussions or meetings after that date. The attached document "HEADING: REQUEST TO CONFINE TO NEW AGE NEWSPAPER" was presented to the BAC meeting but not approved. I did not sign it.
20. I also attach an extract from the minutes of the meeting of the BAC held on 22 February 2011. This document incorrectly states that the BAC recommended the procurement and distribution of the New Age newspaper. The BAC did not take such a resolution. This is corroborated by the attached BAC submission checklist. As appears from this document, many of the key submission compliance were not done.

Mr Siyabonga Mahlangu

21. I only met Mr Siyabonga Mahlangu ("Siya") once in a meeting called by the DPE of all legal departments of the SOEs reporting to the Minister of Public Enterprises and hosted at Eskom. The purpose of the meeting was not known in advance but at the start of the meeting it transpired that the meeting was a follow up of an earlier meeting hosted at the DPE where Mr Mahlangu was not present and where the subject matter was the procurement of legal firms to address transformation objectives.

22. To put what transpired in the meeting where Mr Mahlangu was present in perspective, the circumstances of the earlier meeting is relevant. The earlier meeting was called by the DPE and chaired by a chief director in the legal department (I do not recall his name as he was appointed after my departure from DPE). The meeting was attended by representatives from most of the SOEs. We were advised that the DPE was concerned about demographic representation in the legal firms appointed by the SOEs and wanted a uniform approach to achieving greater representation. Without exception all present expressed support for the transformation objectives that the DPE wanted to achieve as well as for a collaboration between the SOEs to share information towards a harmonised approach. In this regard, the representative of Denel and myself reported that our companies had recently appointed a new panel of legal firms following our respective procurement processes and that included preferential weighting for Broad-Based Black Economic Empowerment (BBBEE) scoring as well as for meaningful formal partnerships with wholly owned black legal firms. It was recommended that these processes be shared with all to determine where our respective procurement can be improved. During the course of discussions certain complexities and compliance considerations were also raised. This included the requirement that procurement processes must follow individual company governance procedures and must be compliant with the PFMA and the Preferential Procurement Policy Framework Act, Act 5 of 2000. Furthermore, it was highlighted that some transactions are complex and most of the experienced skills are housed in bigger firms with BBBEE accredited ratings. During the discussions, the DPE representative indicated that he was concerned as he had to report back to Siya and the latter wanted immediate action and thus where required skills are not available in smaller black firms consideration should be given to allowing the smaller black firms to sub-contract the expertise of the larger predominantly established white firms. At that time, concerns were raised regarding compliance with procurement laws and it was recommended that, in addition to the sharing of information by SOEs, the DPE provides its proposal on how to implement its objectives for consideration by the governance structures of the respective SOEs. It was also recommended that the DPE obtain a legal opinion to guide compliance in this regard. Subsequent to the meeting SOEs, including SAA, shared information but no further feedback or correspondence in this regard came from the DPE, other than the follow up meeting where Mr Mahlangu was present.
23. The follow up meeting was chaired by Ms Matsietsi Mokholo, the then Deputy Director-General, Legal, Governance and Risk. The meeting was attended by representatives of all the SOEs. Ms Mokholo called for a collaborative approach to enhancing BBBEE representation through the procurement of legal services by the respective SOEs. In this regard, representatives in attendance again pledged support and highlighted the considerations raised at the earlier meeting. Mr Mahlangu, sitting next to Ms Mokholo, seemingly got frustrated with how the meeting was proceeding and then abruptly pushed Ms Mokholo aside and took over control of the meeting. In an aggressive tone he informed the meeting that he wants to see action and if SOEs did not cooperate that they will be dealt with. He also proceeded to single SAA out as not being cooperative. The meeting was in shock and colleagues from the DPE tried to calm down Mr Mahlangu. The meeting closed abruptly.
24. I briefed Ms Mzimela on the outcome of both events.

Appointment of New Board of Directors, 2012

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25. Upon the appointment of a new Board of Directors (chaired by Mr Vuyisile Kona) in 2012, management continued with their commitment to diligently serve the Board of Directors and the company. As far as I am aware, none had contemplated leaving the airline and the CEO called on all to continue with our support, commitment and duties as usual. However, within days after the appointment of the new Board of Directors, the Chairperson announced that he will be serving as Executive Chairperson and took office at the company. This announcement caught us all by surprise and confused us regarding reporting lines as the CEO, Ms Mzimela, had not vacated her position. During this period, Mr Kona also called executives directly to his office for meetings without informing, inviting or consulting Ms Mzimela. As far as I am aware all executives complied with Mr Kona's instructions.
26. During this period, Mr Kona came to my office and instructed that I hand over all documents related to (a) the review of existing contracts for purposes of termination or re-negotiation as part of the cost reduction initiatives, and (b) the fleet transactions. I undertook to do so but requested an opportunity to brief Mr Kona on the outcome of the contract review and the A320 legacy contract negotiations. He did not show an interest in such a briefing and indicated that he will personally be handling these matters going forward and he was already engaging with people in that regard.
27. After this incident, I was called to Mr Kona's office for a meeting. Mr Kona indicated that he considered it important to explain his approach to business which is one of honouring favours among friends. He continued to illustrate this approach with an example within his own experience where he requested a previous employer (I cannot recall the name of the company but it operates within the electronic equipment sector) to supply him with a television. I was surprised by the content of the meeting as I anticipated that it may be the opportunity to brief Mr Kona on the matters we discussed earlier, thus I did not respond to Mr Kona's brief on doing business. Mr Kona enquired whether I had any comment and understood what he was saying. I indicated that I understood but had no comment upon which Mr Kona indicated that he will have me investigated if I did not cooperate. I replied that I have and will continue to serve SAA to the best of my ability and that I am not aware of any matter that would warrant any investigation but in such an event I will collaborate with any investigation. I then left the meeting.
28. Upon return to my office, I was perplexed at the turn of events and called the CEO for guidance on how to proceed. Ms Mzimela advised me that she was equally confused and perplexed by events and that she had written to the Minister to seek clarification but had yet not received a response. I spent the rest of the day considering the implications of events during the past year, and, in particular, the past few days, and concluded that there was indeed a new governance approach which would potentially compromise the ability of SAA to become sustainable and further potentially compromise my role and integrity as a prescribed officer of the company. I decided to tender my resignation. I did not discuss this decision with Ms Mzimela.
29. The next day Ms Mzimela called a meeting of the executive management and informed us that she has written to the Minister and received no response and consequently she has tendered her resignation. I indicated that I will be doing the same. I proceeded to finalise my resignation letter and submitted such to the General Manager: Human Resources, Ms Thuli Mpshe, indicating that I am willing to vacate my position earlier than the one-month notice period if that is required by the CEO or Executive Chairman and the Board of Directors. The General

PBM

Manager: Human Resources indicated that she would revert to me and indicated that I must be on standby for a possible meeting with Mr Kona. I proceeded to call the heads of the divisions reporting to me and briefed them on my resignation and for purposes of an orderly hand-over, I shared with them the status of and next steps of all matters current on my desk. We agreed that all documents would remain in my office and they were briefed on the registry of such documents.

30. By the next day, I had not received any response to my letter of resignation nor was I called to a meeting with Mr Kona. Prior to leaving the office that day I enquired with the General Manager: Human Resources whether I would still be called by Mr Kona on that day and she undertook to revert to me. On my way home, I received two calls. The one was from the General Manager: Human Resources informing me that my resignation had been accepted with immediate effect and that I am not required to return the next day. The other was from the Acting Chief Procurement Officer, Mr Alvin Chetty, who wanted my advice on an instruction from Mr Kona to provide him with a number of copies of the bid documents of bidders responding to the RFP for new fleet procurement. His concern was borne out of the fact that the procurement process was not yet completed and submissions were subject to strict confidentiality obligations. I advised him that I am no longer in the employment of SAA and, he must ensure that the procurement process is not compromised. To this end, I advised that he may consider advising Mr Kona of these concerns and should he provide copies of the documents he had to ensure that recipients sign for the documents.
31. After these events, I did not engage further with the Board of Directors or the management of SAA regarding the operations of the airline. My departure from SAA was followed by a period of financial and emotional distress for my family as I have always been the principal provider. Although I could secure short-term assignments, I only secure fixed-term employment in 2014.
32. Other than the documents referred to in paragraphs 19 and 20, I have no records of SAA in my possession. The Corporate Plan and Quarterly Report submissions and correspondence between SAA and the Minister as well as related submissions to the Board of Directors may provide further insight into the aforementioned events.

DATED AND SIGNED AT PRETORIA ON THIS 10th DAY OF DECEMBER 2018



SANDRA JULIE HESTER COETZEE



To:	BAC
From:	Global Supply Management
Date:	22 February 2011

HEADING: REQUEST TO CONFINE TO NEW AGE NEWSPAPER

PURPOSE

To request the BAC to grant permission to buy and distribute the New Age Newspaper at check-in counters at OR Tambo, King Shaka and Cape Town International airports. The purpose is to test passenger interest in this new daily newspaper. The test period will run for a period of 2 months starting 1st April 2011. The cover price per copy is R3.50 incl. vat and we propose the following daily quantities for the test period:

Airport	Daily copies	Daily cost incl VAT
O R Tambo	2000	R7,000
Cape Town Airport	1500	R5,250
King Shaka Airport	500	R1,750
TOTAL	4000	R14,000

If the test succeeds, indicating passenger interest in the newspaper, we will then approach EXCO / BAC for permission to enter into a formal agreement regarding the provision of this newspaper on-board. During the test period, research will be conducted to determine the extent to which customers receive the publication

BACKGROUND

The New Age is an independently owned newspaper published by TNA Media (Pty) Ltd broadly targeting the young and upcoming black middle-class reader. It is a daily newspaper printed currently in Johannesburg, Durban and Cape Town and distributed nationally in all 9 provinces. It is one of the most easy to read newspapers due to its narrow broad-sheet size of 54cm x 8col. The newspaper was launched in Dec 2010 and has a current daily print order of 100 000 copies.

MOTIVATION

This recently launched publication does not yet have an established readership but early indications are that reader interest is growing vastly. It has not as yet achieved a similar status like the Business Day and The Star newspapers and it is for this reason that we would like to test the publication prior to taking it on board. We are of the view that placing the newspaper on board without prior tests and then later withdrawing it due to customer rejection will do a lot of harm to the SAA brand, hence the need to conduct prior tests. Our approach of testing for a two month period without linkage to any trade exchange arrangement will enable us easy walk-out at the end of the test period should results not be positive. However, if there is substantial passenger interest, we will then negotiate better price and other benefits for SAA.

COUNTER PARTY

The following counterparties were consulted:

- Marketing & Product

- Corporate Affairs
- GSM and Finance

PFMA IMPLICATION

In order to comply with the PFMA, the CFST recommend that the BAC approve the submission for the confinement of New Age Newspaper.

APPROVAL PROCESS

BAC

RECOMMENDATION

It is recommended that the BAC grant permission to purchase and distribute the New Age Newspaper at check-in counters at OR Tambo, King Shaka and Cape Town International airports for a period of 2 months starting 1st April 2011.

SIGNATURES:

1. Compiled by:

Ntombi Nzeocha
Ntombi Nzeocha- Commodity Manager

14.02.2011

Date _____

2. Requested by:

Thabani Mkhize
Manager Sponsorship

15/02/2011

Date _____

3. Supported by:

Armstrong Ngcobo
Chief Procurement Officer

16/02/201

Date _____

Fani Zulu
Head- Cooperative Affairs

15/02/2011

Date _____

4. Confirmation of budget or corrective measure to ensure no overspend:

CLM
Stuart Laird-Smith
Financial Controller - Commercial

16 Feb 11

Date _____

5. Approved/not approved by BAC

Sandra Coetzee
BAC- Chairman

Date _____



South African Airways
BAC Secretariat Office
Room 108f
1st Floor E Block
Airways Park
1627

Private Bag x13
ORTIA
Kempton Park, 1627

Tel: 27 11 978-6009
Fax: 27 11 978-6161

EXTRACT FROM THE MINUTES OF THE MEETING OF THE BID ADJUDICATION COUNCIL (22022011) SOUTH AFRICAN AIRWAYS (PTY) LTD HELD 22 FEBRUARY 2011, AT AIRWAYS PARK AT 10:30

6.1 Request to Confine to New Age Newspaper

Adjudicated by BAC: 22 February 2011

It was **RESOLVED THAT** the procurement and distribution of the New Age Newspaper at check-in counters at the OR Tambo Int. Airport, King Shaka Int. Airport and Cape Town Int. Airport for a period of 2 (two) months commencing 01 April 2011, be and is hereby supported and recommended for approval through the Delegation of Authority subject to negotiation of a 10 (ten) percent discount and if not obtained, the submission should be re-tabled at the BAC.

True excerpt of the Minutes



Disclaimer: For Internal Purposes Only

Directors

CA Carolus* (Chairperson), SP Mzimela (Chief Executive), T Daka*, TC Jantjies*, Y Kwinana*, DH Lewis*, RM Loubser*, BF Mohale*, DC Myeni*, JP Ndhlovu*, LG Nkosi-Thomas*, LJ Rabbets*, ZJ Sithole*, M Whitehouse*

*Non Executive

Ruth Kibuuka Company Secretary

South African Airways (Proprietary) Limited Reg No. 1997/02244/07

A STAR ALLIANCE MEMBER 

Tender #:

Tender Name/Description: REQUEST TO QUOTE TO NEW KERE NEWS PAPER

Commodity Manager: NTOMBI NZECHA

Tender Start Date:

Tender End Date:

Value of Contract:

Business Unit: SPONSORSHIP

A BAC submission checklist

SOUTH AFRICAN AIRWAYS

A STAR ALLIANCE MEMBER

Key evidence of submission compliance:		Complete: Yes (✓) / No (X)	Evidence attached: Yes (✓) / No (X)	Comments (incl. if no evidence is provided)
A1	Purpose - a clear description of the purpose of the submission to the BAC and the approvals required	✓	✓	
A2	Summary of the Business case/evidence of demand for the goods procured (the detailed Business case as approved by the Business unit and approved in line with the Delegation of Authority to be attached as an Annexure)	✓	✓	
A3	Details of the tender, number of bidders and acceptance of bids based on the critical criteria. (Tender documentation to be attached as an Annexure)	✓	✓	
A4	Bid evaluation - evaluation criteria, evaluation outcomes and process followed, including due diligence conducted on the potential suppliers (detailed evaluation sheets to be attached as Annexures)	✓	✓	
A5	Financial due diligence	✓	✓	
A6	Bid award recommendation	✓	✓	
A7	Financial impact assessment	✓	✓	
A8	Assessment of fair value	✓	✓	
A9	Risk assessment	✓	✓	
A10	Contracting terms and conditions	✓	✓	
A11	Final recommendation	✓	✓	
A12	All required signatures received	✓	✓	

Comments:

This checklist must not be seen by business and procurement as the only document they need to consider to the exclusion of the actual Supply Chain Manual, the DOA, PFMA and applicable policies and legislation etc.

All tenders that involve IPP considerations must make specific reference to this in the financial considerations of the tender.

I certify that the SAA BAC submission requirements has been met

Commodity Manager	Head of Department - Business Unit
Strategic sourcing manager	Financial controller - Business unit
Head Global Supply Chain	General manager - Business unit.

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Annexure “7”





Memorandum

CEO's Office

To: Director General, Department of Public Enterprises
Mr Tshediso Matona

From: Siza Mzimela

Date: 11 April 2011

Subject: Update on discussions between South African Airways and Jet Airways

- At the meeting held with the Minister on 10 January 2011 between SAA and Jet Airways, a commitment was made to meet with Jet Airways for further discussions within a month.
- A delegation from SAA and Jet Airways met at SAA offices on 24 January 2011 to have further discussions about a possible way forward for the two airlines to work together in a mutually beneficial way.
- I attended the first part of the meeting to ensure that SAA's commitment to find a workable solution to the "mutual" benefit of the parties was communicated and that the SAA team was fully mandated to establish such a solution.
- Jet Airways' proposal on code sharing was still on the basis of SAA code sharing on them and SAA pulling off the route. SAA indicated that this was unacceptable.
- Jet Airways subsequently made concessions on a few beyond points.
- This proposal was analysed by SAA and was found to not be commercially viable.
- It is important to note the following regarding the operation between South Africa and India:

South African Airways has operated the South Africa – India for over 15 years and until the introduction of services by Jet Airways in April 2010, SAA was the sole direct operator.

The India – South Africa route is a strategic network route for SAA as it provides connecting traffic to other network destinations such as South America.

SAA utilises various types of partnerships to enter into commercial relationships with various regional and international airlines.

Directors

CA Carolus* (Chairperson) SP Mzimela (Chief Executive) T Daka* TC Janjies* Y Kwinana* DH Lewis* RM Loubser* BF Mohale* DC Myeni* JP Ndlovu* LG Nkosi-Thomson* LJ Rabbits* ZJ Sithole* M Whitehouse*

*Non Executive

Ruth Kibuka Company Secretary

South African Airways (Proprietary) Limited

Reg No. 1997-022444/07

A STAR ALLIANCE MEMBER

PM

- Successful partnerships are reciprocal and ensure that both parties are able to profitably operate, expand their networks and provide their passengers with seamless connectivity.
- Airlines however must ensure that the commercial arrangements are not used as a mechanism to engage in anti competitive activities where agreements on consumer pricing and capacity planning are used to influence market behavior.
- The Competition Authorities especially scrutinize arrangements such as code shares on routes where only two carriers operate as these are deemed to have a propensity for collusion.
- The market size between two regions (Southern Africa and India) has been growing at an average of 12% per annum over the last three years. The Jet Airways' introduction into the market increased capacity by over 150% - subsequently reduced to 108%.
- SAA's proposal is for the Parties to explore cooperation that would enhance efficiency in the market without lessening competition. The attached presentation outlays different scenarios that SAA would prefer to explore within the context of the Competition Laws.
- SAA has on numerous occasions engaged with Jet Airways to evaluate options for further co-operation. However an agreement with Jet Airways which would benefit both airlines has not been reached at this stage. The proposal from Jet Airways at this stage for cooperation would further erode SAA's revenue and impact on our strategic intentions for the route.
- The proposal from SAA for seven weekly frequencies between the two airlines is a mutually beneficial arrangement.
- A further compromise would be a total of eight weekly frequencies code shared between the two airlines.

I hope that this provides further information to the memo delivered to yourselves on 10 January 2011.

PSM

Annexure “8”





SOUTH AFRICAN AIRWAYS

A STAR ALLIANCE MEMBER 

Cooperation

between Jet Airways and SAA

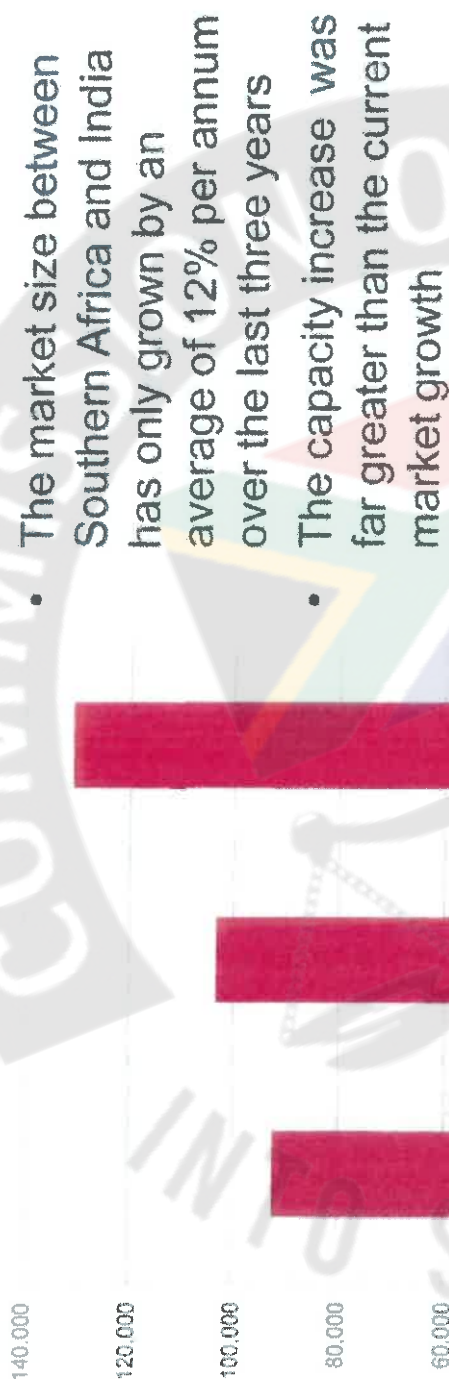
on the Bombay route

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Page 1

P8M

Market Size between Southern Africa and India



- The market size between Southern Africa and India has only grown by an average of 12% per annum over the last three years
- The capacity increase was far greater than the current market growth

APM

Market Share: Jan – Dec 2010

SOUTH AFRICA to BOM



SAA's market share was diluted and Jet gained market share mainly due to inability to serve connecting markets beyond India

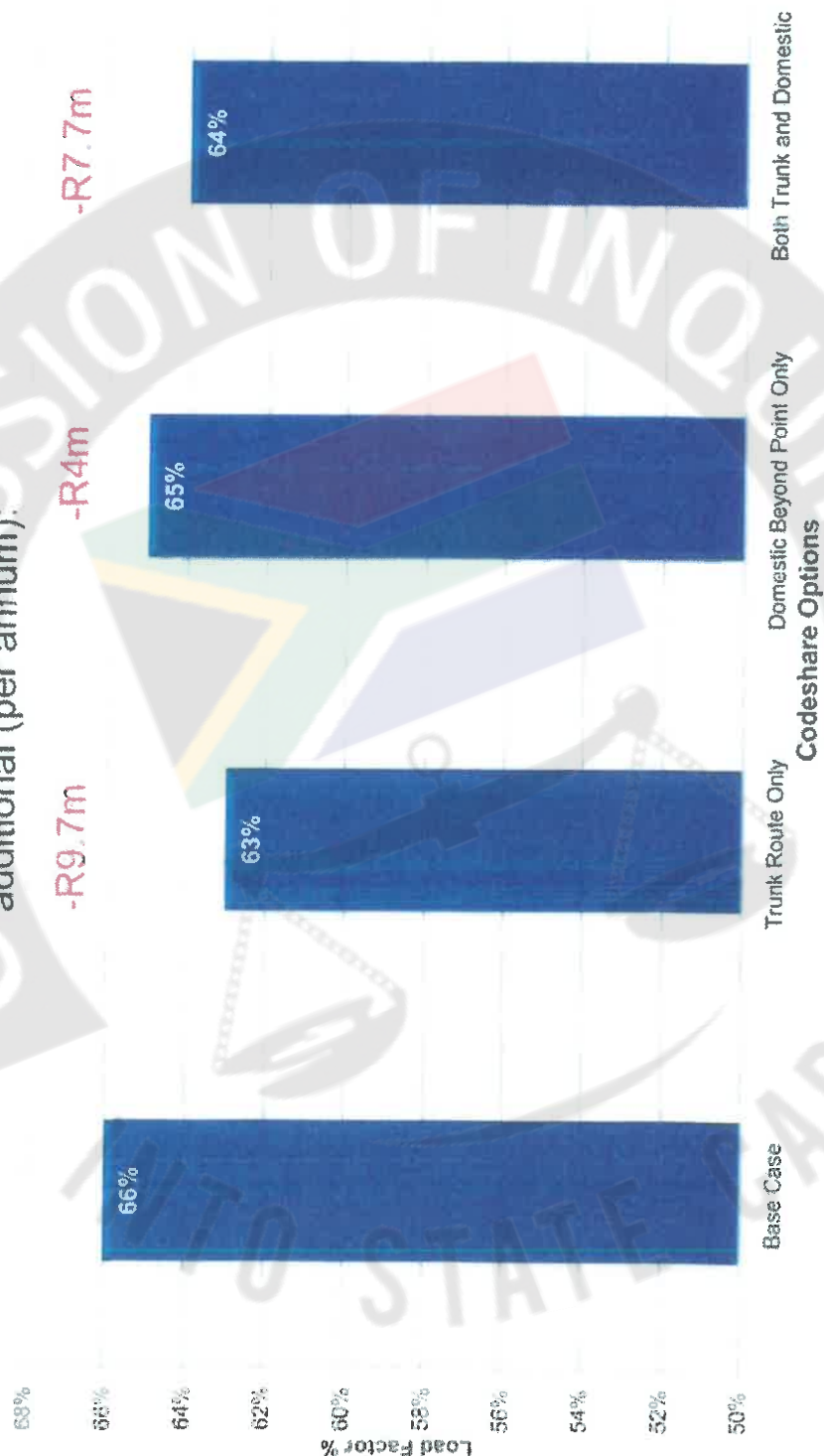
SAA Proprietary and confidential

Page 3

BM

Scenario 1: Code-Sharing Evaluation – Impact to SAA

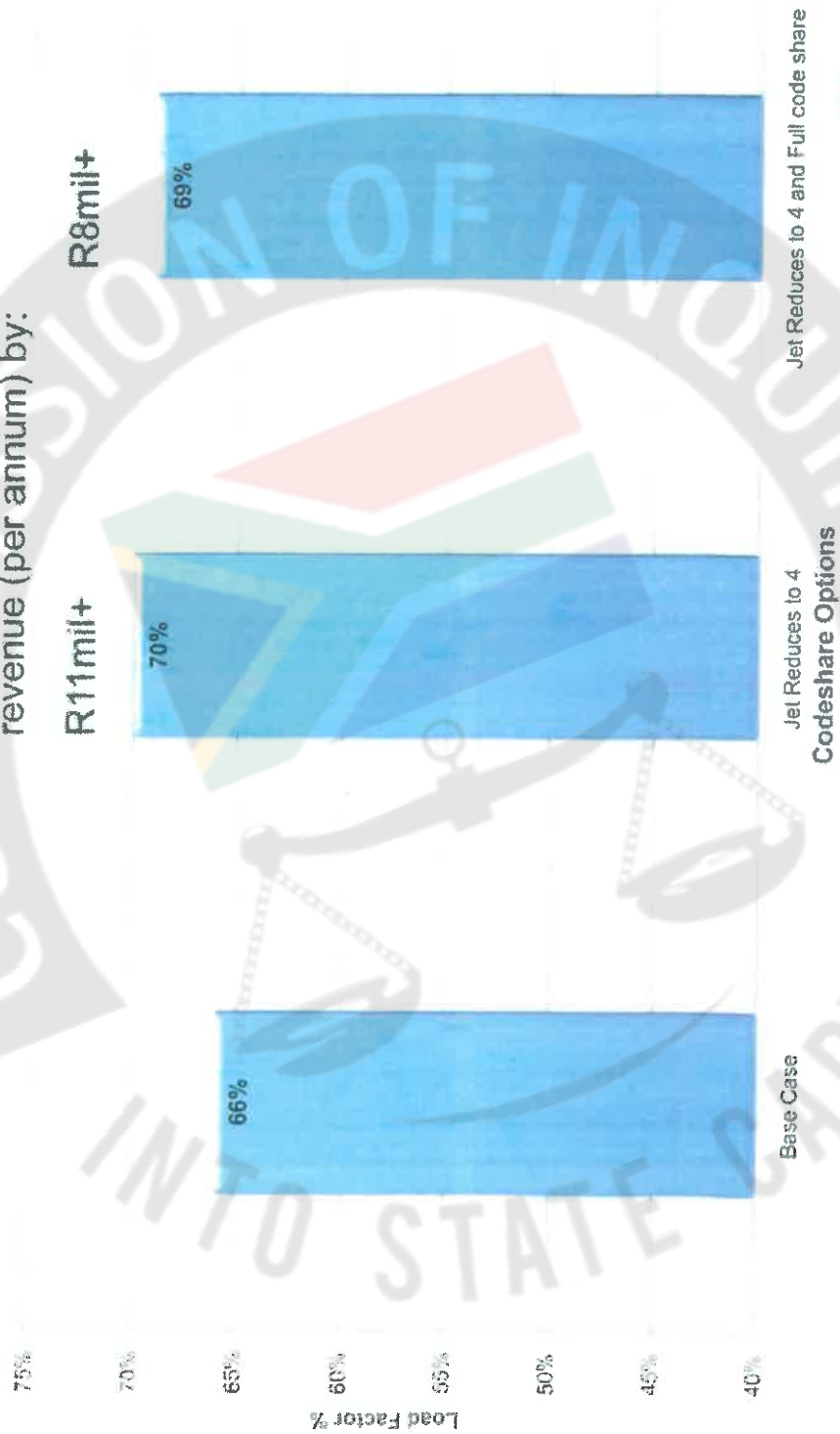
For each of these options, SAA will lose an additional (per annum):



PM

Scenario 1: Code share Evaluation – Jet reduces frequency from 5 to 4 per week

For each of these options, SAA will increase revenue (per annum) by:



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Page 5

PSM

Scenario 1: Code share Evaluation – Jet reduces frequency from 5 to 3 per week

For each of these options, SAA will increase revenue (per annum) by:



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APG Analysis

SAA analyzed scenarios of SAA and Jet code sharing on each others trunk, domestic, regional markets and SAA's South American operations

Results of Code Sharing

- SAA loses 65 passengers per week on its trunk route to BOM, thus further weakening the flight. The objective of the code share therefore is not achieved
- This is a result of Jet having more frequency in the market to BOM. Thus passengers who would book SAA will now book Jet
- Jet's market share would increase on the BOM route further putting profitability pressure on the SAA flight
- Jet is able to use the benefits of SAA's extensive domestic network, while not providing the same benefit to SAA in India

SORG	SDST	PAX_DIF
DUR	JNB	35
CPT	JNB	29
JNB	LUN	26
JNB	LAD	17
GBE	JNB	11
JNB	NLA	10
HRE	JNB	6
EZE	JNB	4
JNB	MPM	4
JNB	PLZ	2
CPT	DUR	-2
ELS	JNB	-5
BOM	JNB	-65

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Jet Airways' (9W) Result with Code Share

SCENARIO	AL	ORG	DSI	FLIGHTS	SEATS	LEG PAX	TOTAL	O&D	LOAD
BASE CASE AS OF TODAY	9W	BOM	JNB	10	2,260	1,727	1,727	762,864	76%
9W ADDS 2 NEW DOMESTIC FLTS	9W	BOM	JNB	10	2,260	1,810	1,810	788,027	80%
SAA PUTS ITS CODE ON 9W'S DOM FLTS	9W	BOM	JNB	10	2,260	1,873	1,873	793,459	83%

- The analysis above shows the benefit Jet Airways derives on its JNB-BOM sector, if SAA puts its code on 9W's domestic flights
- This benefit, as shown above amounts to a gain of 3% load factor for Jet

PM

Point of Sale Imbalance

POINT OF SALE APRIL 2010 to NOV 2010

BOM		JNB			
JNB	BOM	JNB	BOM		
INDIA	10,028	54%	INDIA	8,153	50%
SOUTH AFRICA	5,224	28%	SOUTH AFRICA	4,879	30%
BRAZIL	747	4%	BRAZIL	807	5%
ARGENTINA	427	2%	ARGENTINA	480	3%
MOZAMBIQUE	294	2%	MOZAMBIQUE	289	2%
USA	265	1%	USA	193	1%
BOTSWANA	193	1%	BOTSWANA	181	1%
	18,590			16,182	

• Jet Airways has a point of sale advantage

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Conclusion

- SAA's connecting traffic is considerable and is not in a position to adjust its schedules as there is a high risk of losing connecting traffic from and beyond JNB
- SAA remains open to potential partnership with Jet Airways under the right conditions

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PSM

Annexure “9”





public enterprises
Department
Public Enterprises
REPUBLIC OF SOUTH AFRICA

Suite 301, Indusnet Building, 090, Sandton, Johannesburg, 2001, P.O. Box 954, Johannesburg, 2001
Tel: (011) 431 1000 Fax: (011) 501 2321, (011) 501 0528

Ms. Siza Mzimela
CEO, South African Airways
Airways Park, OR Tambo International Airport
Kempston Park
1627

Tel: 011 978 6553
Fax: 011 978 2545

Dear Ms. Mzimela:

MUMBAI-JOHANNESBURG ROUTE

Further to the meeting you held with the Minister of Public Enterprises on 14 April 2011 in the above regard, I hereby request that you furnish me with specific information on this route pursuant to the task of facilitating a resolution of this matter with Jet Airways as assigned to me by Minister Gigaba on that occasion.

As a departure point I recall that SAA assured the Minister of their commitment to possible cooperation with Jet Airways based on identified synergies and on a mutually beneficial basis. Jet Airways has made the same commitment.

I attach in a separate sheet a full listing of the type of information I need to have deeper appreciation of the overall performance, challenges and opportunities for SAA on this route. It would assist me greatly if, in addition to the requested data, SAA would provide me with an in-depth profitability analysis on this route, setting out the factors contributing to SAA's losses and how SAA has sought to mitigate these losses.

It would also be useful to gain a sense of possibilities under different scenarios, starting with how SAA would address the current and projected losses on this route where no cooperation is sought with Jet Airways. Secondly, various scenarios of cooperation with Jet Airways in which SAA's ongoing loss position can be turned positive and the implications for sharing of frequencies between SAA and Jet Airways, including the scenario where SAA operates no aircraft on this route.

SAA had emphasised the importance of beyond point considerations in assessing possible cooperation with Jet Airways, as well as the strategic importance of the South African route. I have sought to lay out proposed future and relevant financial information in the attached.

SPM

Please note that I am requesting similar information to the extent possible from Jet Airways in this regard. Once I have received and analysed the information requested, I shall draw up a discussion document setting out what I see as areas of possible cooperation and agreement between the two airlines, and proposing options that the parties may consider, and then request yourselves and Jet Airways to comment on the document. I will then update the document once I have factored in all comments, after which I shall convene a meeting to finalise the negotiations.

Kindly provide me with the required information as urgently as possible, but not later than 19 May 2011. I propose to provide you with a discussion document by 26 May 2011 and will expect your comments by end of business on 30 May 2011. I propose that we reserve the 6 and 7 June 2011 to finalise this matter.

I trust the above is in order and look forward to your earliest response and cooperation.

Kind regards


Mr. Tshediso Matona
Director General

Date: 3/5/2011



PM

South African Airways is requested to furnish the following information to the DGB: Public Enterprises for further study. The information may be provided on a monthly basis for years 2010-11 and 2009-10. For years 2008-09, 2007-08, 2006-07, this information may be provided on a quarterly basis.

1. Aircraft Type
2. Frequencies per week
3. Seat capacity
4. Number of passengers carried
5. Split of passengers carried on the Johannesburg-Mumbai market and key connecting markets in South Africa, Southern Africa and America
6. Apart from the trunk route Johannesburg-Mumbai-Johannesburg, additional revenue generated to the rest of SAA network
7. Seat factors
8. Passenger revenues
9. Cargo loads (kgs)
10. Cargo revenues
11. Costs including breakdown for key cost drivers
12. Profitability
13. Market shares of SAA and key competitors on the Mumbai-Johannesburg, and India-South Africa markets
14. Additionally, it is also required that detailed responses be included on how the economics on the route are expected to change following the introduction of the new A330-200 aircraft effective May 2011. Please provide traffic, cost (including breakdown of key cost drivers), revenue and profitability projections for the year 2011-12 starting from May 2011.

fsm

Annexure “10”



Code Sharing Agreement South African Airways Pty (Ltd) / Jet Airways (India Limited)

MEMORANDUM

1. Stemela Lubbe Attorneys is instructed by South African Airways to give an opinion on whether an exemption application should be brought before the Competition Commission with regards to a proposed code sharing agreement between SAA and Jet Airways (India) Limited.
2. We are briefed with the following documents:
 - 2.1 Draft code sharing agreement between Jet Airways (India) Limited and South African Airways (Pty) Ltd.
3. We have identified the following provisions of the Competition Act 98 of 1998 Section 4 Chapter 2 as potentially applicable to the proposed code sharing agreement and the possibility of bringing an exemption application before the Competition Commission:
 - 3.1 Section 4(1) of the Act prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if:

PPM

3.1.1 It has the effect of substantially preventing or lessening competition in a market, unless a party to the agreement, concerted practice, or decision can prove that any technological, efficiency or other pro-competitive gain resulting from it outweighs that effect (Section 4 (1)(a); or

3.1.2 It involves any of the following restrictive horizontal practices:

3.1.2.1 directly or indirectly fixing a purchase or selling price or any other trading condition (Section 4(b)(i)); or

3.1.2.2 dividing markets by allocating customers, suppliers, territories, or specific types of goods or services (Section 4(b)(ii); or

3.1.2.3 Collusive tendering (Section 4(b)(iii).

3.2 If it is found that the code share agreement is in contravention of any of the provisions of Section 4 Chapter 2 of the Competition Act 98 of 1998 then an Exemption application will have to be filed with the Competition Commission in terms of Chapter 2 Section 10 of the Act

4. To determine whether the proposed code share agreement is in contravention of the Competition Act it is necessary to discuss each of the

pm

provisions of Section 4 Chapter 2 with regards to the terms of the proposed code share agreement:

4.1 Section 4(1)(b) of the Competition Act identifies certain forms of cooperation between rival firms which will almost always raise competition concerns and for which the possibility of any redeeming virtue is highly unlikely. The conduct is outright or *per se* prohibited in terms of the Competition Act. It is therefore necessary to first determine if the terms of the code sharing agreement will contravene any of the three restrictive horizontal practices.

4.1.1 Section 4(1)(b)(i) prohibits competitors from "fixing" or agreeing on prices. The fixing of prices occurs whenever a contract, arrangement or understanding has the effect or likely effect of fixing, controlling or maintaining prices, discounts, allowances, rebates or credits in relation to goods or services bought or sold by any party in competition with one another. It is important to note that there need not necessarily be a written agreement on a specific price. A mere understanding is all that is required to be in contravention of the Competition Act.

Clause 2.3 of the draft agreement makes provision that each party shall set its own fares for air transportation on all code-shared flights sold under its designator code and flight number. Clause 2.3 (c) of the draft agreement further makes provisions that nothing in

the agreement prohibits the other party to maintain or charge rates, fares, tariffs, markets, services, distribution and marketing methods, or competitive strategies.

South African Airways (Pty) Ltd and Jet Airways (India) Limited did not agree to set any rates for the code shared flights and the rates will thus remain competitive. The proposed agreement is not a contravention of Section 4(1)(b)(i)

4.1.2 Section 4(1)(b)(ii) prohibits the dividing of markets by allocating customers, suppliers, territories or specific types of goods or services. In *South African Airways (Pty) Ltd (SAA) / Qantas Airways Ltd (Qantas) Case 2000 Nov & and Government Notice 408 of 2000*, SAA and Qantas filed an exemption application with the Competition Commission in respect of their code sharing agreement on the South Africa-Australia route. The parties were concerned that the code share agreement was in contravention of Section 4(1)(b)(ii) in that they engaged in market allocation in terms of which SAA was to operate on the route between Johannesburg and Perth whilst Qantas would operate on the route between Johannesburg and Sydney. The Competition Commission found that the agreement between SAA and Qantas constituted market allocation, in contravention of Section 4(1)(b)(ii) of the Act.

PBM

The code share agreement between SAA and Jet airlines makes provision that SAA will operate on certain routes and that Jet Airways will operate on certain routes. The contravention of Section 4(1)(b)(ii) when seen in the context of the abovementioned case is of concern. It could possibly be found by the Competition Commission that the agreement constitutes market division. It is important in this regard to establish whether SAA had a bi-lateral agreement with India to fly inland before the code sharing agreement was concluded. If SAA did not have the right to fly inland in India it would not be viewed as a competitor of Jet Airlines and also if Jet Airlines did not have a bi-lateral agreement with South Africa to fly inland in South Africa before the agreement was concluded then it would not be seen as a competitor of SAA. If however SAA had a bi-lateral agreement with India then it would be seen as a competitor of Jet-Airlines and the code sharing agreement would thus be in contravention of Section (1)(b)(ii) in that it constitutes market division.

4.1.3 Section 4(1)(b)(iii) prohibits collusive tendering. This section is not applicable.

P&M

5. It is further necessary to look at the purpose and spirit of the Competition Act in respect of the reasons why the Act regulates interaction between competitors.

The economic basis for competition-law scrutiny of horizontal agreements is founded on the recognition that profit-maximising competitors may have an incentive to co-ordinate their behaviour rather than compete vigorously with one another. The purpose of the Act is to:

- To provide all South Africans equal opportunity to participate fairly in the national economy;
- Achieve a more effective and efficient economy in South Africa;
- Provide for markets in which consumers have access to, and can freely select the quality and variety of goods and services they desire;
- Create greater capability and an environment for South Africans to compete effectively in International markets ;
- Restrain particular trade practices which undermine a competitive economy
- Regulate the transfer of economic ownership in keeping with the public interest;
- Establish independent institutions to monitor economic competition; and
- Give effect to the international law obligations of the Republic.

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The terms of the proposed code sharing agreement are not in contravention of the Spirit and purpose of the Act. The terms of the agreement make provisions for a non-exclusive agreement that will, in essence, provide the opportunity to other competitors to form part of the agreement. The Agreement does not restrict the ability of SAA and Jet Airways to engage in vigorous and full competition with each other and other entities. The Agreement further does not restrict the parties to do business, or choose not to do business with any other entities.

6. Assessing the competitive impact of code sharing agreements

In determining the potential anti-competitive effects of a code sharing agreement, authorities will consider the extent to which the cooperation proposed under the code sharing agreement would result in a lessening of competition.

Restrictions of competition are much more likely to arise where the parties to the agreement are both operating flights on routes covered by the agreement. Competition authorities will also take into account whether one of the parties is a potential competitor with the other, as the conclusion of a code sharing agreement between the operating carrier and a potential competitor may result in the suppression of that competitive constraint.

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Regulators will carefully assess the degree of horizontal cooperation between the parties. Horizontal restraints such as price fixing, market sharing or limiting capacity will almost always be prohibited. Other types of cooperation will need to be analysed more carefully in order to assess their potential negative effects on the market and whether they may on the other hand lead to substantial economic benefits to customers. Each agreement is therefore analysed on a case by case basis and placed in its economic context. Code sharing agreements which provide for some form of coordination on key competition parameters will usually have substantial restrictive effects.

In addition, regulators will examine whether the parties to the code sharing agreement hold any substantial market power on the routes concerned, whether jointly or individually. Market power is mainly assessed by examining the parties combined market share. The higher the combined market share, the higher the risk that the code sharing agreement will have restrictive effects. In particular, competition authorities will verify that the code sharing agreement does not contribute to the creation, maintenance or strengthening of a dominant position, or allow the parties to exploit such a position.

Besides analysing the agreements themselves, regulators also remain watchful for any competition law breaches that may arise during the code share lifetime. As they offer a platform for ongoing discussion and cooperation and because they increase price transparency amongst the parties, code sharing agreements may sometimes lead to the exchange of competitively sensitive information that is not strictly required for the code sharing

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operation, or outright agreements on capacity or on prices. As a result competition law compliance does not end with the design of the agreement, but requires continued monitoring during its lifetime.¹

7. Recommendation

When the specific provisions of the Competition Act are analysed and applied to the terms of the proposed code share agreement it can be argued that the terms of the agreement are not a contravention of Chapter 2 of the Competition Act 98 of 1998. It can further be argued that the terms of the agreement are not in contravention of the spirit and purpose of the Competition Act. However, when one has regard to the manner in which each agreement is assessed by the Competition Commission one might take a great risk when not filing an exemption application with the Competition Commission.

In the light of the fact that each application is assessed on its own merits and the fact that there is no set of rules or case law to give a clear indication of what the outcome of an application might be it will be advised to file an exemption application with the Competition Commission.

We also confirmed with Mr Rambau, an investigator at the competition commission, who deals with the code share agreement exemption

¹ Thomas C & M Waha "Competition Law aspects of codesharing agreements: how to fly in safe skies" (2009) Lexology

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applications, that a new resolution was passed to make provision that such applications have to be dealt with within a period of 6 months and that the Competition Commission feels that a time period of six months is realistic.

It is therefore our recommendation that we proceed to file an exemption application with the Competition Commission. There will be no prejudice for SAA should it be found by the commission that the exemption application was not necessary as opposed to the prejudice that will be suffered if an application is not brought and it is later found that SAA is in contravention of Chapter 2 of the Act. The position of the Commission on code sharing agreements is just too uncertain (this is admitted by the Commission) to take the risk of not applying for an exemption.

8. Filing of an Exemption Application.

The procedure for filing an exemption as set out by the Competition Commission will be as follows:

1. A form CC3(1) must be completed and filed with the commission.
2. The following information must be attached to the form CC3(1)
 - An address for service of documents in South Africa
 - A short description of the business of SAA.
 - A brief description of the agreement or practice which you seek to have exempted from the application of Chapter 2, and, if an agreement has already been made its date.
 - The names and addresses of other parties to that agreement or practice
 - The objective in terms of Section 10(3) of the Act on which you rely
 - The facts and contentions on which you rely

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- The sections of the Act that you believe may be contravened by the agreement, practice or category of agreements or practices you have described, and a motivation for that belief.
3. After the form CC3(1) has been filed the application fee of R5000.00 has to be paid into the account of the Competition Commission.
 4. Thereafter the Competition Commission will request further information if needed or they will proceed to investigate the matter.
 5. As stated above the procedure should be finalised within a period of 6 months.

The grounds in terms of Section 10(3) that SAA will have to prove to be granted an exemption is:

- Maintenance or promotion of exports; or
- Promotion of the competitiveness of small businesses or firms controlled or owned by historically disadvantaged persons; or
- Changing the productive capacity to stop decline in an industry; or
- Maintaining economic stability in an industry designated by the Minister.

We recommend that we proceed to brief an Advocate specializing in competition matters to draft the Exemption application.

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Annexure “11”





SOUTH AFRICAN AIRWAYS

27 March 2012

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1627

Tel: +27 11 978 1908
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Email: ceo@flysaa.com

Mr Tshediso Matona
Director General
Department of Public Enterprises
Email: tshediso.matona@dpe.gov.za

Dear Tshediso,

Update on discussion between SAA and Jet Airways

I wish to update you on the discussions currently taking place between South African Airways (SAA) and Jet Airways (Jet).

A confidential letter of intent (LOI) was signed on 29 November 2011 in Johannesburg following a meeting between the parties. SAA and Jet further met at Jet's Head Offices in Mumbai on 14 December 2011 and during that meeting agreed on the scope of co-operation between the parties and subsequently signed a Memorandum of Understanding (MoU).

It was the parties' intention to commence negotiations and formulate agreements that will give effect to the above undertakings no later than end February 2012 with implementation by April 2012. The commercial agreements, in particular the codeshare agreement, was both negotiated and contracted by the commercial department however as a company requirement and to meet certain statutory requirements, all agreements have to be legally sanctioned. The external legal opinion obtained recommends that SAA submit an exemption application to the Competition Commission before finalisation.

Legal counsel have not identified any outright contravention of the Act in assessing the codeshare agreement, the Competition Commission will evaluate whether the parties to the codeshare agreement hold any substantial market power, individually or jointly, on these routes. As the codeshare will be implemented on routes in which SAA and Jet are direct competitors, with significant market share, there is a perceived inherent risk of the existence of anti-competitive conduct which may expose SAA to a finding relating to market allocation or an agreement that substantially prevents or lessens competition in a market that cannot be justified by pro-competitive gains.

Directors

CA Carolus* (Chairperson), SP Mzimela (Chief Executive), WH Meyer (Chief Financial Officer), T Daka*, TC Jantjes*, Y Kwinana*, DH Lewis*, RM Loubser*, BF Mohale*, DC Myeni*, JP Ndlovu*, LG Nkosi-Thomas*, LJ Rabbets*, ZJ Sihole*, M Whitehouse*

*Non-Executive

Ruth Kibuka Company Secretary

South African Airways (Proprietary) Limited Reg No 1997/02244/07

A STAR ALLIANCE MEMBER

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Based on prior experience of applying for exemption from the Competition Commission, such applications may be adjudicated within a period of 6 months. It can however be extended to one year if the Commission requests additional information in support of the application. SAA will therefore expedite all internal assessments and the exemption application for urgent submission to the Competition Commission. In order that we can achieve results timeously, we therefore wish to request assistance from the Department of Public Enterprises to facilitate the matter on behalf of SAA with the relevant authorities.

Kind Regards



Siza Mzimela
Chief Executive Officer

cc: Raisibe Lepule, Deputy Director General: Transport, Department of Public Enterprises
Raisibe.Lepule@dpe.gov.za

Siyabonga Mahlangu, Special Advisor to the Minister, Legal & Political, Department of Public Enterprises
Siyabonga.Mahlangu@dpe.gov.za



Annexure “12”





SOUTH AFRICAN AIRWAYS

9 May 2012

Mr Tshediso Matona
 Director General
 Department of Public Enterprises
 Email: tshediso.matona@dpe.gov.za
 By fax: 012-342-4146

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 1627

Tel: +27 11 978 1908
 Fax: +27 11 978 6055
 Email: ceo@flysaa.com

Dear Tshediso

Update on Discussions between South African Airways and Jet Airways

Further to the update provided in March 2012, the following is the status of the commercial discussions currently taking place between South African Airways (SAA) and Jet Airways (Jet).

SAA's appointed attorneys were in the process of filing for the exemption with the Competition Commission. On 7 May 2012, Jet Airways advised the industry that it would be redeploying its aircraft on its existing route network and this decision has necessitated the temporary suspension of its Mumbai - Johannesburg flights effective 12 June 2012.

SAA will review its codeshare operations as well as the structure of the codeshare agreement with Jet Airways in view of the above decision by Jet Airways. Should the revised structure have any competition implications and necessitate the need to file for exemption with the Competition Commission, SAA will once again request assistance from the DPE. As SAA currently also codeshares with Air India on its Mumbai - Johannesburg operations, we do not however, anticipate any concerns with allowing Jet Airways as a codeshare partner on the route post the suspension of their flights.

We will keep you updated with the developments.

Kind Regards

Siza Mzimela
 Chief Executive Officer

Cc: Raisibe Lepule, Raisibe.Lepule@dpe.gov.za
 Matsietsi Mokholo, Matsietsi.mokholo@dpe.gov.za
 Melanchton Makobe, Melanchton.Makobe@dpe.gov.za

Directors

CA Carolus* (Chairperson), SP Mzimela (Chief Executive), WH Meyer (Chief Financial Officer), T Daka*, TC Janjies*, Y Kwinana*, DH Lewis*, RM Loubser*, BF Mohale*, DC Myeni*, JP Ndhlovu*, LG Nkosi-Thomas*, LJ Rabbets*, ZJ Sithole*, M Whitehouse*

*Non-Executive

Ruth Kibuka Company Secretary

South African Airways (Proprietary) Limited

Reg No 1997/027444/07

A STAR ALLIANCE MEMBER

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Annexure “13”



Code Sharing Agreement

relating to

a bilateral free-sale code-share (passenger only) between

Jet Airways (India) Limited

and

South African Airways (Proprietary) Limited

Date 01 October 2012



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This **Code Sharing Agreement** is made on 01 October 2012

- between** (1) **Jet Airways (India) Limited**, a company registered under the Indian Companies Act, 1956 having its registered office at Siroya Centre, Sahar Airport Road, Andheri (E), Mumbai - 400 099, India, (which shall be referred to as **Jet Airways** or **9W**)
- and** (2) **South African Airways (Proprietary) Limited** a company registered under the laws of South Africa, with its head office located at Airways Park, Jones Road, O.R. Tambo International Airport, Johannesburg (which shall be referred to as **SAA** or **SA**)

Whereas,

- A. Jet Airways and SAA desire to place their designator code on the Code-shared Flights operated by other Party and market and sell capacity on such Flights as if the Flights were its own as far as permitted under any applicable law, regulations and policy;
- B. Jet Airways and SAA enter into this Agreement in order to continue to offer competitive and cost effective air services between their respective countries and improve the quality of the air services they now offer, all to the benefit of the travelling public; and
- C. Jet Airways and SAA wish to record the terms of their co-operation in this Agreement.

It is agreed

1. Definitions

1.1 Definitions

In this Agreement, unless the context otherwise requires

Affiliate means, with respect to any Person or entity, any other Person or entity directly or indirectly controlling, controlled by, or under common control with, such Person or entity. For purposes of this definition, "control" (including "controlled by" and "under common control with") means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person or entity, whether through the ownership of voting securities, by contract or otherwise.

Agreement or Code Share Agreement means this agreement (including all schedules and Appendices) as amended from time to time;

Assistance has the meaning set out in clause 16.3;

Assisting Carrier has the meaning set out in clause 16.3;

Carrier has the meaning set out in clause 9.2;

Code-shared Flights or Flights means the flights specified in Appendix A on which seats are offered for sale to the public by the Operating Carrier and the

Handwritten signatures and initials:
 [Signature] [Initials] [Signature]
 1

Handwritten signature: PSM

Marketing Carrier, on which Parties use their own airline designator code and flight number and **Code-shared Flight or Flight** shall be interpreted accordingly;

Code-sharing means where one Carrier assigns its airline designator code to a flight operated by another Carrier and **Code-share** shall be interpreted accordingly;

Confidential Information has the meaning given to it in 27.1;

CRS means Computerised Reservation System;

Defaulting Party has the meaning set out in 26.2;

Validating Carrier means the Party whose airline designator code and flight number appears on the coupon or e-ticket held by the relevant passenger for the Code-shared Flight;

Disruption means any delay, interruption, diversion, unscheduled stop, cancellation or other irregularity resulting in an inability of a Code-shared Flight to arrive on the scheduled time at the scheduled destination;

Effective Date has the meaning given to it in 25.1;

Event of Default has the meaning given to it in 26.2;

Force Majeure has the meaning given to it in 23.1;

GDS means Global Distribution System;

IATA means International Air Transport Association;

IIA has the meaning set out in clause 20.3;

Insolvency Event means in relation to a Party:

- (a) an order being made, or its shareholders passing a resolution or the Party calling a meeting for the consideration of such a resolution, for its liquidation or for it to be placed under official management or otherwise wound up or dissolved; or
- (b) an application being made to a court for an order for that Party's liquidation or for it to be placed under official management or otherwise wound up or dissolved, or any steps being taken to seek such an order, unless the application is withdrawn or dismissed within 60 Business Days; or
- (c) an administrator, controller or statutory manager being appointed to it; or
- (d) (i) that Party resolving to appoint, or taking any steps to appoint, a controller or analogous person to that Party or any material part of that Party's property; or

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- (ii) an application being made to a court for an order to appoint a Controller, provisional liquidator, trustee for creditors or analogous person to it or any material part of its property, unless the application is withdrawn or dismissed within fifteen (15) Business Days; or
- (iii) an appointment of the kind referred to in clause (ii) above being made (whether or not following an application); or
- (e) the holder of a security interest taking possession of any material part of that Party's property; or
- (f) that Party suspending payment of its debts (that are not the subject of a bona fide dispute), or being or becoming unable to pay its debts when they are due or being or becoming otherwise insolvent; or
- (g) that Party taking any step to enable it to enter into a court-sanctioned compromise or arrangement with, or assignment for the benefit of, any of its creditors, unless such event:
 - (i) takes place as part of a solvent reconstruction, amalgamation, merger or consolidation; or
 - (ii) would not have a material adverse effect on either the value of that Party's equity securities or the ability or capacity of that Party to perform this Agreement in accordance with its terms; or
- (h) it ceases to carry on business or suspends or all or substantially all of its operations (other than a temporary suspension by reason of Force Majeure);

Marketing Carrier means, with respect to a Code-shared Flight, the Party who does not operate such Code-shared Flight, but places its designator code on such flight and offers seats for sale thereon under its own name and flight number;

Non-Defaulting Party has the meaning set out in 26.2;

Operating Carrier means, with respect to a Code-shared Flight, the Party operating such Flight with its own or leased aircraft;

Requesting Carrier has the meaning set out in clause 16.3;

Reservation System means the reservation system operated by or on behalf of a Party; and

Taxes mean any taxes, assessments, levies or fees.

Ticketing Carrier means the party (including any third party) who issued the ticket or e-ticket held by the relevant passenger.

12 Headings

Article, clause and other headings are for ease of reference only and shall not be deemed to form any part of the context or to affect the interpretation of this Agreement.

1.3 **Defined expressions**

Expressions defined in the main body of this Agreement have that defined meaning in the whole of this Agreement including the introduction and Appendices, unless the context requires otherwise.

1.4 **Negative obligations**

An obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done.

1.5 **Parties**

References to Parties are references to the Parties to this Agreement and references to a "Party", is a reference to one of the Parties (as appropriate).

1.6 **Persons**

References to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities, in each case whether or not having separate legal personality.

1.7 **Plural and singular**

Words importing the singular number shall include the plural and vice versa.

1.8 **Clauses and introduction**

References to articles are references to articles of this Agreement.

1.9 **Documents**

A reference to documentation includes a reference to that documentation as modified, supplemented, novated or substituted from time to time.

1.10 **Statutes and regulations**

References to any statutory provision include any statutory provision which amends or replaces it, and any subordinate legislation under it.

1.11 **Include and including**

References to the words "include" or "including" are to be construed without limitation to the generality of the preceding words.

2. **Code-sharing**

2.1 **Code-sharing**

- (a) Each Party hereby grants to the other the non-exclusive right to Code-share on a "free sell" basis on any Code-shared Flight for which it or its Affiliate is the Operating Carrier in accordance with the terms and

conditions of this Agreement. The Affiliates of the Parties are identified in Appendix A Clause 3.

- (b) The Code-shared Flights to which this Agreement relates and the schedules for those Flights are specified in **Appendix A**, as may be amended by the Parties from time to time in writing. However it is understood by the Parties that any such amendment will be effective only subject to the receipt of the necessary regulatory approvals for the amended Code-shared Flights
- (c) In determining the schedules for the Code-shared Flights, the Parties will co-operate to devise as seamless a product as possible with the objective of providing the best product to their passengers on the Code-shared Flights.
- (d) Station Procedures in connection with the Code-shared Flights will be as prescribed in **Appendix B**.
- (e) Special Service Requirements in connection with the Code-shared Flights will be as prescribed in **Appendix C**.
- (f) Revenue Accounting Procedures in connection with the Code-Shared Flights will be as prescribed in **Appendix D**.
- (g) Appendices A through D annexed to this Agreement and as amended by the Parties from time to time in writing are deemed to be part of this Agreement by the above references.

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General Requirements

(a) Certificates and Licences

Jet Airways and SA have and will maintain the requisite operating authorities and all other permits, licences, certificates and insurances required by the regulatory authorities of India, South Africa and any other relevant regulatory authorities to enable them to properly and legitimately perform the Code-shared Flights required by this Agreement.

(b) Aircraft and Crews

The Operating Carrier shall operate its Code-shared Flights in compliance with the requirements and regulations of India and South Africa's relevant regulatory authorities as the case may be and all other governmental regulations applicable and shall operate the Code-shared Flights with its own or leased aircraft and crews in accordance with and subject to its usual business practices.

(c) Airworthiness

The aircraft operated by the Operating Carrier performing a Code-shared Flight shall be in an airworthy and fully operational condition, properly manned and equipped in accordance with all applicable laws and fit for the operation agreed by the Parties. The aircraft will remain under the technical and operational control of the Operating Carrier at all times and shall be flown in accordance with the operational procedures of the Operating Carrier and all applicable laws.

2.3 Revenue Accounting

- (a) Each Party shall set its own fares for air transportation on all Code-shared Flights sold under its designator code and flight number, subject to applicable bilateral air services agreements and applicable laws and regulations.
- (b) The Parties agree that nothing in this Agreement shall be interpreted in any way as detracting from or limiting the continuing right of each Party to market and sell capacity under its designator code and flight number on the Code-shared Flights, including the fare levels for transportation in such capacity, to the travelling public independently of the other Party.
- (c) Nothing in this Agreement confers any rights on either Party to restrict the other Party's ability:
 - (i) to maintain or change rates, fares, tariffs, markets, services, distribution and marketing methods, competitive strategies or similar matters; or
 - (ii) to engage in vigorous and full competition with each other and other entities; or
 - (iii) to do business, or choose not to do business, with other entities.
- (d) Subject to clause 10, each Party shall be responsible for all commission payments, related costs and interline service charges as well as marketing, selling and advertising costs in respect of traffic carried within its available capacity on the Code-shared Flights.
- (e) The Operating Carrier shall retain all flight coupons and the associated revenue for all passengers boarded on its Flight. The settlement of the revenue will be in accordance to the procedures and terms detailed in Appendix D.

3. Payments for Code-shared Flights

Unless the Parties otherwise agree, in respect of each Code-shared Flight, the relevant Operating Carrier will invoice the Marketing Carrier in respect of such Flights through the IATA Clearing House in accordance with IATA Clearing House procedures pursuant to the Special Prorate Agreement (SPA) made between Jet Airways and SA, if applicable, in conjunction with this Agreement.

4. Tickets

Subject to the terms of this Agreement, each Party has the right to market the other Party's Code-shared Flights and sell seats on such Code-shared Flights using the Marketing Carrier's designator code rather than the Operating Carrier's designator code. The Operating Carrier will accept tickets issued by the other Party for travel on Code-shared Flights without the necessity for endorsement.

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5. **Flight interruption manifests**

Unless otherwise specified in this Agreement, any passengers of the Marketing Carrier transferred to the Operating Carrier under the Flight Interruption Manifest rules (**FIM Passengers**) will be charged by the Operating Carrier to the Marketing Carrier at the FIM rates agreed in the SPA or if such rates do not exist, in accordance with the IATA Revenue Accounting Manual (RAM) A2.2.6.

6. **In-flight service**

- 6.1 The in-flight services provided on the Code-shared Flights will be the Operating Carrier's standard in-flight services.
- 6.2 Passengers on Code-shared Flights will be informed by cabin crew about the Code-share arrangements between Jet Airways and SAA in announcements in a form which have been agreed between the Parties. For the avoidance of doubt, neither Party shall be entitled to compel the other Party to change its announcement form as long as the announcement is in accordance with acceptable industry requirements.
- 6.3 The Operating Carrier will provide the same in-flight service offering to passengers travelling on the Marketing Carrier's code on Code-shared Flights as it provides to its own passengers travelling in the same class on those Code-shared Flights.

7. **Free and reduced rate transportation**

The terms of this Agreement will not be applicable to travel industry rebated transportation as such term is used in the airline industry (i.e. AD, ID etc.). All such rebated transportation on the Code-shared Flights shall be administered by the Operating Carrier according to its own rules and procedures and in accordance with any relevant reduced rate agreement between the Parties in force from time to time.

8. **Advertising, sales, communications, name and logo use**

8.1 **Communications**

The Code-shared Flights shall be marketed to the public using both, the 9W and SA names and designators and incorporating, where reasonably appropriate and feasible, the various 9W and SA trademarks, service marks, logos, and other indicia used by 9W and SA in their passenger services. 9W and SA will co-operate fully to ensure that reservations, sales, and passenger handling services for all passengers connecting to or from the Code-shared Flights are provided in a manner that best meets the needs of all passengers using the Code-shared Flights.

8.2 **Name/Logo Use**

The Parties reciprocally recognise the other Party's property in and title to their own respective names, products, service marks, trademarks, logos and designator code. Except as otherwise permitted under this Agreement or other agreements between the Parties, neither Party shall use the name, products,

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service marks, trademarks, logos, or designator code of the other Party without the prior written permission of the other Party.

9. Traffic handling

- 9.1 All transportation documents, including all coupons, tickets or e-tickets, issued by the Marketing Carrier to passengers for carriage of passengers in its capacity on a Code-shared Flight shall indicate the designator code and flight number of the Marketing Carrier.
- 9.2 On the Code-shared Flights, the Marketing Carrier shall be considered as the Carrier and shall be deemed to have concluded the contract of carriage with the passenger.
- 9.3 Notwithstanding anything contained in this clause 9, the liability as between the Parties shall be governed by the provisions of clause 20 of this Agreement.

10. CRS and GDS charges

All charges levied by any CRS provider in respect of Code-shared Flights shall be for the account of the party whose flight designator is the one used to effect the reservations through the CRS on the relevant Code-shared Flight.

11. Publication of schedules

- 11.1 The Parties will ensure the Code-shared Flights are included in all public flight listings and industry schedules, including but not limited to:
- (a) the Official Airline Guide and similar passenger schedule information services; and
 - (b) CRS and each Party's Reservation Systems.
- 11.2 Each Code-shared Flight shall be identified in such guides, CRS and each Party's Reservation Systems by both the designator codes of the Parties.
- 11.3 The Parties will ensure that in all industry publications, and distribution system displays, where possible the code of the Marketing Carrier shall be supplemented with the words "Operated by [name of Operating Carrier]".

12. Conditions of carriage, claims procedure, Immigration

12.1 Conditions of carriage

The Operating Carrier will be entitled to conduct its Code-shared Flights with respect to passengers for whom the Marketing Carrier is the Validating Carrier in conformity with the Operating Carrier's Conditions of Carriage. The Operating Carrier will indemnify and hold harmless the Marketing Carrier for any and all loss, damage, cost or expense claimed by a passenger which results from the Operating Carrier's Conditions of Carriage being different to or inconsistent with the Marketing Carrier's Conditions of Carriage. Each Party acknowledges that, without limiting the foregoing, the relationship between the Marketing Carrier

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and passengers for whom the Marketing Carrier is the Validating Carrier is governed by the Marketing Carrier's Conditions of Carriage.

12.2 **Notification of policies and procedures and Conditions of Carriage**

Except as otherwise specified in this Agreement, the Operating Carrier's policies and procedures will apply to Code-shared Flights.

Within 10 working days of the Effective Date each Party will provide to the other Party a copy of its policies and procedures and Conditions of Carriage as applicable to Code-shared Flights. Each Party must notify the other Party promptly of any material change to its policies and procedures or Conditions of Carriage.

For the avoidance of doubt neither the Marketing Carrier nor the Operating Carrier shall be entitled to compel the other Party to change its Conditions of Carriage though the Parties may, on a non-obligatory basis, cooperate to resolve inconsistencies.

12.3 **Claims procedure**

- (a) Each Party will handle and bear the cost of all customer complaints received by it in accordance with its own customer complaint handling procedures.
- (b) The Party that receives a complaint will use its best efforts to resolve the issue at first point of contact, except a complaint that relates to, mishandled baggage or an in-flight injury or accident which must be referred to the Operating Carrier and its insurers for handling.
- (c) If the complaint relates to the conduct of both the Operating Carrier and the Marketing Carrier, then the Parties will work together in the handling, resolution, settlement or defence of that complaint but the final claims handling authority rests with the Operating Carrier and its insurers.

12.4 **Immigration**

The Operating Carrier shall be liable for any and all expenses associated with non-existent or non-complying immigration and/or customs documentation of the Code-shared Flight passengers for Code-shared Flights only and shall indemnify and hold harmless the Marketing Carrier for all costs and expenses related thereto, including fines and repatriation costs.

13. **Irregularity handling and oversales**

13.1 **Operating Carrier Responsibility**

- (a) The Operating Carrier of a Code-shared Flight will have the ultimate responsibility with respect to the operation, disposition, safety and performance of the Code-shared Flight. The Operating Carrier will also have complete discretion concerning:
 - (i) passengers, cabin crews, baggage, cargo and mail to be carried on a Code-shared Flight and their distribution; and

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- (ii) whether or not the Code-shared Flight will operate and where the Code-shared Flight will land.
- (b) Each Party acknowledges that, in its capacity as Marketing Carrier of a Code-shared Flight, it will respect and be bound by all such decisions of the Operating Carrier.
- (c) Subject to the Marketing Carrier's compliance with clause 13.1(b), the Operating Carrier will indemnify and hold harmless the Marketing Carrier for all losses, damages, costs and expenses related to the decisions taken by the Operating Carrier.

13.2 Notice of Disruption

Each Party will, in respect of the Code-shared Flights for which it is the Operating Carrier, give to the other Party prompt notice of any actual or anticipated Disruption as soon as possible. The Operating Carrier will immediately report all Disruptions by SITA in the case of

SA to 9W	SITA: BOMCR9W, BOMR29W
9W to SA:	SITA: JNBCMSA, JNBWMSA, JNBWWSA, JNBOXSA

13.3 Continuation of Code-shared Flight

Each Party will comply with any agreed procedures for and will co-operate as fully as possible in the event of any Disruption with a view to:

- (a) minimising delay and inconvenience to passengers; and
- (b) minimising the loss of revenue to either Party.

13.4 Costs of Disruption

- (a) In any Disruption affecting a Code-shared Flight or resulting in the offloading or downgrading of the Marketing Carrier's customers, the Operating Carrier will, subject to clause 13.5, bear all reasonable and substantiated costs associated with such event, including the cost of meals, accommodation, transfers and alternative travel arrangements to the final ticketed destination. The Parties will review their existing procedures for accommodating passengers in the event of a Disruption or overbooking to determine their adequacy for the purpose of this Agreement and will make such adjustments to existing procedures as they find necessary and appropriate.
- (b) The provisions of this Agreement will not prevent the Marketing Carrier from making representations, or offering additional assistance or compensation, to passengers for whom it is the Marketing Carrier, provided that, notwithstanding any other provision of this Agreement to the contrary, and save as otherwise agreed with the Operating Carrier, the Marketing Carrier will be wholly liable for, and will indemnify the Operating Carrier for any loss, damage, cost or expense incurred or suffered by the Operating Carrier in respect of, any such offer or representations, assistance or compensation.

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- (c) In case of disruptions, tickets issued with either Party's flight number for the Code Share Flights shall be accepted by the other Party on their operated flight for carriage without the necessity for endorsement.

13.5 **Flight cancellation or disruption**

In the event of cancellation or disruption of a Code-shared Flight, the following procedures will apply:

- (a) If such cancellation or disruption is notified to the Marketing Carrier 72 hours or more before scheduled time of departure, each Party (or its nominated agent) will assume the responsibility for notifying the passengers who hold tickets with its designator code and making necessary arrangements for alternative transportation. Where possible, the Parties will rebook passengers on other Code-shared Flights. Any costs and expenses incurred for such alternative transportation for any passenger will be absorbed by the Marketing Carrier in accordance with its applicable policies and procedures.
- (b) If such cancellation or disruption is notified to the Marketing Carrier in less than 72 hours before scheduled time of departure, the Operating Carrier (or its nominated agent) will, with the assistance of the Marketing Carrier where practical, make all necessary arrangements to transport all passengers to the destination of the relevant Code-shared Flight. Any costs and expenses incurred for such alternative transportation will be borne by the Operating Carrier, in accordance with its applicable policies and procedures. The Operating Carrier will notify the Marketing Carrier promptly of all alternative travel arrangements it makes for the Marketing Carrier's passengers.

13.6 **Substitution of aircraft**

The Operating Carrier has the right to substitute from time-to-time an alternative aircraft type due to unserviceability or other technical reasons and will in such event advise the Marketing Carrier accordingly as soon as is reasonably practicable.

13.7 **Consultation**

The Parties will consult in good faith upon the occurrence of Disruptions with respect to Code-shared Flights where such Disruptions are not covered by this Agreement.

13.8 **Equal treatment**

For the convenience of all passengers of the Parties, in the event of a Disruption, equal treatment and amenities will be extended to both Parties' passengers of the relevant Code-shared Flight.

13.9 **Overbooking and denied boarding**

Where there is insufficient capacity on a Code-shared Flight to accommodate a confirmed passenger, resulting in a passenger offload or denied boarding, the Operating Carrier will:

- (a) use reasonable endeavours to ensure that both Parties' passengers who hold confirmed reservations for the flight are not offloaded or denied boarding;
- (b) be responsible for the handling of such passengers at the Operating Carrier's cost and ensure that the Marketing Carrier's customers receive services, compensation and benefits to at least the same standard as would be afforded to the Operating Carrier's passengers; and
- (c) bear the cost of such compensation, including downgrade compensation, except that if the Marketing Carrier caused the passenger offload, that Marketing Carrier must reimburse the Operating Carrier for all such costs.

In the event coupons are endorsed to a third party carrier, the Validating Carrier will arrange settlement with the third party carrier under normal Interline procedures.

13.10 Involuntary rerouting

Procedures will be in accordance with IATA Resolution 735d. Code Share Passengers shall be re-booked primarily onto alternative 9W or SA services where available and convenient. Nothing in this clause however restricts the Operating Carrier from rerouting the affected passengers on a third party carrier.

13.11 Missed connections

Each Party, when it is the delivering carrier, shall cover the reasonable costs of providing passenger amenities to Code-shared Flight passengers who fail to make their connections to the Code-shared Flights as a result of matters within the control of the delivering carrier, i.e. flight cancellation, short term equipment changes or overbooking. These passenger amenities shall include items such as hotel accommodation, and meals as appropriate. The Parties agree to work closely together to minimise any costs to either of them in such circumstances. IATA Resolution 735d shall apply in all other circumstances.

13.12 Use of flight numbers

The Operating Carrier will include the Marketing Carrier's flight numbers in all SSIM (Standard Schedule Information Manual), SSM (Standard Schedule Message), ASM (Adhoc Schedule Message) and Inter Airline Thru-Check In messages relating to the Code-shared Flights.

14. Applicability of policies, rules and procedures

In the event this Agreement is silent with respect to whether 9W or SA's policies, rules and procedures are applicable and in the absence of any applicable agreement, law, rule or regulation, the policies, rules and procedures of the Operating Carrier shall apply to the extent consistent with the terms of this Agreement.

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15. Security

In the operation of Code-shared Flights, the Operating Carrier may utilise its own security programmes. In undertaking the respective security programmes, the Operating Carrier may interview passengers, x-ray baggage and perform such other functions as it may choose in its sole discretion. 9W and SA agree to cooperate in all matters pertaining to security procedures, requirements and obligations in respect of all points to or from which the Code-share Flights operate subject to the requirement to obtain any appropriate regulatory authority or approval.

16. Emergency procedures

16.1 Emergency Response

Both Parties shall comply with emergency response plans and procedures for mutual assistance as agreed.

16.2 Additional requirements

In addition to the requirements of clause 16.1, the Parties agree that the following additional requirements will apply in respect of an accident or emergency affecting any Code-shared Flight:

- (a) The Operating Carrier is to manage the reconciliation/verification of the passenger manifest in accordance with its own procedures. The Marketing Carrier is to assist with this process where passengers for whom it is the Validating Carrier are involved in the emergency.
- (b) It is the Operating Carrier's responsibility to act as the central point for the collection of all passenger data regarding the affected Code-shared Flight as required for post incident/accident investigation. The Marketing Carrier is to cooperate in providing such data in regard to passengers for whom it is the Validating Carrier.
- (c) The Operating Carrier is responsible for the welfare of all passengers and crew and their families. The Marketing Carrier is responsible for providing information about its passengers for whom it is the Validating Carrier and their families in support of the humanitarian response of the Operating Carrier.
- (d) The Marketing Carrier is to refer initial calls from family and friends of passengers for whom it is the Validating Carrier to the Operating Carrier and shall observe information guidelines set by the Operating Carrier in handling public inquiries about ticketed passengers of the Marketing Carrier.
- (e) The Operating Carrier must provide a copy of the passenger manifest detailing the names of all of the passengers for whom the Marketing Carrier is the Validating Carrier on board any affected Code-shared Flight as soon as the information is available. The Marketing Carrier must not release such information or any part of such information to any third party without the prior written approval of the Operating Carrier, which must not be withheld or unreasonably delayed if the Marketing Carrier is required by law to release the information.

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- (f) The Operating Carrier will dispatch a Passenger Name List (PNL) of all the Marketing Carrier's passengers on board the affected flight as soon as possible to the contacts as follows:

Jet Airways (India) Limited to send information to SAA at
 Operations Control Centre: OCC Duty Manager
 Telephone: +27 11 978-3316/5074
 Fax: +27 11 970-4387
 SITA: JNBWWSA/JNBWMSA
 E-Mail: SAA-OCCManagement@flysaa.com

SAA to send information to Jet Airways (India) Limited at
 Operations Control Centre: Mumbai, India (24 by 7)
 Telephone: +91-22-2626-6632
 Fax: +91-22-2615-6265
 SITA: BOMOW9W (Operations Duty Manager)
 E-Mail: occbom@jetairways.com

- (g) The Operating Carrier is to retain responsibility for overall management and finance for an emergency response in accordance with its procedures. The Operating Carrier will reimburse all actual and reasonable costs incurred by the Marketing Carrier in providing any such required assistance to the Operating Carrier in respect of passengers for whom the Marketing Carrier is the Validating Carrier. Any expenses incurred by the Marketing Carrier for an emergency response shall be billed to the Operating Carrier within sixty (60) days of the occurrence, duly supported by the necessary documentary evidence.
- (h) The Marketing Carrier must not without the prior written approval of the Operating Carrier make any admission of liability on behalf of itself or the Operating Carrier in respect of any accident or emergency.
- (i) The Marketing Carrier must not, except as required by law, make any comment on the cause of any incident or accident involving a Code-shared Flight to any third party including the media, any passenger or any relative or friend of any passenger without prior written approval of the Operating Carrier.
- (j) Each Party is individually responsible for maintaining the security of data entrusted to that Party by passengers or their agents, especially during emergency response. Therefore, both Parties must ensure that no information about the flight or passengers/crew on that flight or their families is released to any third party without consultation and the prior consent of all parties concerned.
- (k) In the event of an operational emergency affecting the passengers of a Code-shared Flight, the Operating Carrier shall notify the Marketing Carrier without delay to provide relevant details of the emergency by referring to the following contacts (or as otherwise notified in writing):

South African Airways

Administrative Contact	Emergency Contact
Emergency Response Procedures	Operations Control Centre

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SITA/Tel/Fax	SITA/Tel/Fax
Name: Zama Ngubane	ATTN: OCC Duty Manager
Sita : JNBOXSA	Sita: JNBWWSA/JNBWMSA
Title: Manager Emergency Response Planning & Co-Ordination	Title: OCC Duty Manager
Tel: +27 11 978-5556	Tel: +27 11 978-3316/5074
Fax: +27 11 978-5563	Fax: +27 11 970-4387
Email: ZamaNgubane@flysaa.com	Email: SAA-OCCManagement@flysaa.com

Jet Airways

Initial Response

9W Ops Control Centre (24/7)
 Tel: +91 22 2626 6632 / 71
 SITA: BOMOW9W
 Fax: +91 22 2615 6265
 Email: occbom@jetairways.com

After activation of the Crisis Management Center

Deputy Chief - Flight Safety Gp. Capt R.H.Deshmukh
 Tel : +91 22 61211324 Fax : +91 22 61211677
 Mobile : + 91 9820217058 Email : rdeshmukh@jetairways.com

16.3 Request for Assistance

If, following an accident or emergency, one Party (**Requesting Carrier**) requests the assistance of another Party (**Assisting Carrier**) to handle aspects of an emergency situation and the Assisting Carrier provides such assistance (**Assistance**):

- (a) the Assisting Carrier will endeavour to provide assistance of the type and to the extent and for the duration of the Requesting Carrier's request however, nothing in this Agreement or any written policy or procedures will impose an obligation on a Party to provide Assistance to the other Party;
- (b) the Requesting Carrier must pay all costs and expenses incurred by the Assisting Carrier in the provision of the Assistance in accordance with this Agreement, including salary costs for activated personnel, reasonable rates for internal staff time, communication costs, materials costs, costs paid to third parties and any other miscellaneous direct or indirect costs incurred in consequence of the Assistance being provided. All such costs and expenses will be charged to the Requesting Carrier on an actual cost basis in the currency in which the cost is incurred. The costs and expenses must be

paid by the Requesting Carrier within forty five (45) days after the end of the month in which the relevant invoice from the Assisting Carrier was received;

- (c) except in the case of gross negligence or wilful misconduct on the part of the Assisting Carrier or its personnel, the Requesting Carrier indemnifies (and must keep indemnified) and holds harmless the Assisting Carrier and its personnel against any and all loss, damage, cost or expense arising out of, or in connection with any claims suffered or incurred by those indemnified in relation to:
 - (i) any act or omission of the Assisting Carrier or its personnel in connection with the provision of the Assistance;
 - (ii) any act or omission of the Requesting Carrier or its personnel in connection with requesting the Assistance;
 - (iii) any loss of or damage to the property belonging to the Assisting Carrier or its personnel, whilst providing the Assistance, irrespective of the cause of such loss or damage;
 - (iv) any injury of whatever kind, and howsoever caused, including the death of personnel of the Requesting Carrier, any third party or of the Assisting Carrier, in connection with providing the Assistance; and
 - (v) any deficiency in the Assistance provided for whatever reason,

provided that such loss, damage, cost or expense arises or is incurred as a result of assistance specifically requested (verbally or in writing) by the Requesting Carrier; and
- (d) to the extent permitted by law, the Requesting Carrier waives, releases and renounces all warranties, obligations and liabilities of the Assisting Carrier, express or implied, arising by law or otherwise, with respect to any deficiency in the Assistance provided or any other thing connected with the Assistance, including any implied warranty of fitness for a particular purpose or merchantability, any liability arising from strict liability in tort or implied warranty arising from course of dealing.

Each Party must procure and maintain at its own cost and expense throughout the term of this Agreement world wide legal liability insurance cover which will provide extensive coverage including, where possible, coverage for liabilities which the other Party as the Assisting Carrier may incur in connection with this Agreement. Each Party must procure (to the extent of the indemnity set out in this clause) that its insurers renounce their rights of subrogation and recourse against any Assisting Carrier. The requirements to maintain insurance under this clause does not in any way reduce the obligations of a Party to effect insurance as required elsewhere in this Agreement.

17. Compliance with regulations

- 17.1 Nothing in this Agreement will require either Party to contravene any government law, rule or regulation. The Parties confirm that all transportation services and advertising or other forms of solicitation of that Party will comply in full with all applicable laws, rules and regulations.

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- 17.2 Both 9W and SA will comply with all laws and regulations applicable to its dealings with passengers, consumers, the sale of passenger transportation by air and the operation of the business and shall maintain all applicable licenses, permits and consents, including an IATA License and those imposed by industry bodies, required to enter into and perform its obligations under this Agreement.
- 17.3 Each Carrier will comply with the consumer protection laws of all Competent Authorities applicable to it in connection with the services it will provide a consumer resulting out of this agreement.
- 17.4 When demand exceeds capacity on a given Code-shared Flight, 9W and SA may operate extra capacity, provided the required government approvals have been obtained. For such extra capacity, the normal procedures stipulated in this Agreement shall be applied unless otherwise agreed.
- 17.5 Nothing in this Agreement precludes either 9W or SA from operating additional flights not covered by this Agreement on the same routes as the Code-shared Flights.

18. Insurance

- 18.1 Throughout the duration of this Agreement, the Operating Carrier shall procure and maintain, or shall cause the operator of the aircraft, if operation of Code Share Flights is subcontracted to any third party operator, to procure and maintain, in full force and effect the following insurances in respect of the Code-shared Flights, operated by it or its, as contemplated by this Agreement.
- (a) Aircraft Hull All Risks and Hull War and Allied Perils Insurances for the aircraft operated and shall cause its Insurers to waive any and all rights of subrogation against the Marketing Carrier, its directors, officers, agents and employees to the extent the Marketing Carrier, its directors, officers, agents and employees is entitled to indemnification.
 - (b) Comprehensive Aviation Legal Liability Insurance covering Third Party Legal Liability, Passenger, Baggage, Cargo and Mail, Personal Injury and Products Legal Liability Insurance (including legal liability cover for war and allied perils as per Lloyds Clause AVN52E) for a combined single limit of not less than;
 - (i) United States Dollars One Billion only (US\$1,000,000,000) for each occurrence, each wide-body aircraft, and in the aggregate in respect of Products but Personal Injury limited to United States Dollars Twenty Five Million only (US\$25,000,000) for any one offence and in the aggregate; and cover for legal liabilities arising from war and allied perils as per Lloyds Clause AVN52E will also be subject to a limit of not less than United States Dollar One Billion only (US\$1,000,000,000) for each occurrence, each wide-body aircraft and in the aggregate, and
 - (ii) United States Dollars Seven Hundred and Fifty million only (US\$ 750,000,000) for each occurrence, each Boeing 737 series aircraft, and in the aggregate in respect of Products but Personal Injury limited to United States Dollars Twenty Five Million only (US\$25,000,000) for any one offence and in the aggregate; and cover for legal liabilities arising from war and allied perils as per Lloyds Clause AVN52E will also be subject to a limit of not less than

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United States Dollar Seven Hundred and Fifty Million only (US\$ 750,000,000) for each occurrence, each Boeing 737 series aircraft and in the aggregate.

18.2 Such legal liability insurance in 18.1(b)(i) and (b)(ii) shall contain the following provisions:

- (a) include the Marketing Carrier, its directors, officers, agents, and employees as additional assureds (the "Additional Assureds") except to the extent claims are due to the wilful misconduct or gross negligence of the Marketing Carrier, its directors, officers, agents and employees.
- (b) provide that the insurance shall operate in all respects as if a separate policy had been issued covering each Party insured hereunder. Notwithstanding the foregoing the total liability of Insurers in respect of any and all insureds shall not exceed the limits of liability stated in the policy.
- (c) provide that this insurance shall be primary and without right of contribution from any other insurance carried by the Additional Assureds.
- (d) provide that the Additional Assureds shall have no responsibility for any premium and Insurers shall waive any rights of set-off or counter-claim against the Additional Assureds.
- (e) provide that the cover afforded to each Additional Assured by the policy shall not be invalidated by any act or omission (including misrepresentation and non-disclosure) of any other person or Party which results in a breach of any term, condition, or warranty of the policy provided that the Additional Assured so protected has not caused, contributed to or knowingly condoned the said act or omission.
- (f) provide that, except in respect of any provision for cancellation or automatic termination specified in the policy or any endorsement thereof, the cover provided may only be cancelled or materially altered in a manner adverse to the Additional Insureds by the giving of not less than thirty (30) days (ten (10) days in the event of cancellation due to non-payment of premium) notice in writing except that with respect to war and allied perils coverage, such period of notice shall be seven (7) days or such lesser period as may be customarily available

Certificates of Insurance evidencing compliance with the foregoing shall be made available by the Operating Carrier to the Marketing Carrier in good time before the first flight hereunder and prior to each and every renewal of such insurance(s).

18.3 The Marketing Carrier agrees that the Operating Carrier and its insurers shall handle, resolve, settle, or defend any and all claims with respect to the insurances listed within clause 18. The Marketing Carrier and the Operating Carrier agree to consult and cooperate in the handling, resolution, settlement or defence of such claims, but the final claims handling authority rests with the Operating Carrier and its insurers.

18.4 The Operating Carrier and the Marketing Carrier shall each procure at its own cost Workmen's Compensation or a corresponding Employer's Liability insurance against the liabilities of each respective Party to its employees for death or injury howsoever and whatsoever caused.

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19. Settlement of disputes

In the event of a dispute between the Parties concerning this Agreement, including any dispute as to its existence or validity, that is not settled by negotiations between the Parties, either Party may by written request to the IATA Director General require the dispute to be finally settled by arbitration in accordance with the procedures contained in IATA Resolution 780 "Form of Interline Traffic Agreement" which arbitration shall be considered as an integrated part of this Agreement. The arbitration shall be conducted in the English language and take place in London, England, unless another location is agreed by the Parties. As provided in the IATA Interline Traffic Agreement, the tribunal shall settle its own procedure except for governing law.

20. Liability and Indemnity

20.1 Indemnity in respect of Marketing Carrier

- (a) Subject to the provisions of this clause 20, the Operating Carrier will indemnify and hold harmless the Marketing Carrier, its directors, officers, employees and agents from and against all liabilities, losses, damages, costs or expenses including all costs and expenses incidental thereto, which may occur against, be charged to or recoverable from the Marketing Carrier, its directors, officers, agents and/or employees by reason of the death of or injury to any person or loss of or damage to property including the aircraft, baggage and cargo or any delay in each case arising out of or in any way connected with Code-shared Flights operated by the Operating Carrier, except to the extent due to the wilful misconduct or gross negligence of the Marketing Carrier, its directors, officers, employees and/or agents.

20.2 Indemnity in respect of employees on duty under the Agreement

Notwithstanding the provisions of clause 20.1 above, each Party shall assume liability for, indemnify and hold harmless the other Party, its directors, officers, agents and employees from all costs and expenses for any injury to or death of employees of such Party on duty under this Agreement (except when these are passengers for whom the other Party is the Validating Carrier), or any damage to or loss of property used or provided to execute the Code-shared Flights (including the aircraft provided under this Agreement) of such Party arising out of or in any way connected with the Code-shared Flights except to the extent due to the wilful misconduct or gross negligence of the other Party.

20.3 Liability of each Party

The indemnity provisions in clauses 20.1 and 20.2 apply, regardless of whether a Party has:

- (a) varied its liability in accordance with any applicable law, regulation, convention or contract, including the IATA Inter-carrier Agreement on Passenger Liability (IIA) and the Agreement on Measures to Implement the IIA;
- (b) waived any available limitation of liability; or

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- (c) complied with any applicable law or regulation requiring a carrier to provide support to accident victims and their families.

20.4 Traffic documents and reservations

Each Party will be responsible for the issuance of its own traffic documents and the reservation of space on the Code-shared Flights, and shall indemnify the other Party, its directors, officers, agents and employees against all claims, demands, costs, expenses and liability arising there from, provided that such indemnification shall not cover claims caused solely by the gross negligence or wilful misconduct of the other Party or any of its directors, officers, employees or agents.

20.5 Notice of claim

Each Party must advise the other Party of any claim, action or proceeding that is presented to or instituted against it in respect of matters to which the indemnities in clauses 20.1 and 20.2 are applicable and each Party must co-operate in the resolution, settlement or defence of such claim, action or proceeding but the final claims handling authority rests with the Operating Carrier and its insurers.

20.6 Liability for Subcontractors

If the Operating Carrier subcontracts the operation of a Code-shared Flight to a third party, the liability of the Operating Carrier shall remain unaffected, and the Operating Carrier will ensure that an indemnity clause similar to clause 20.1 and similar insurance requirements with no less stringent conditions and complying in all respects with clause 18 are included in the subcontract.

20.7 Agreement does not supersede any other agreements between the Parties

This clause 20 shall not supersede the provisions of any other agreements between the Parties particularly but not limited to any ground handling agreements.

21. Taxation

21.1 Direct Taxes

- (a) Except as provided below, any Taxes on, or measured by gross receipts from the sale of air transportation or tickets (excluding corporate income taxes measured by gross or net income of the recipient) will be collected and paid to the appropriate taxing authority on a timely basis by the Party receiving such gross receipts. Unless otherwise agreed, where there are Taxes that are not on or measured by gross receipts from the sale of air transportation, but which nevertheless may be payable by or recoverable from the passenger on the sale of airline tickets but which are ultimately the responsibility of the Operating Carrier, the Operating Carrier will bill these Taxes to the Marketing Carrier through the interline billing system. Any Party that breaches its obligations under this clause will also be responsible for any interest and penalties resulting from such breach.

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- (b) Both Parties acknowledge that the taxation authorities of their respective countries may impose withholding taxes on certain of the payments that either of the Parties or their agents ("Payer") may be obligated to pay to the other party ("Payee"), notwithstanding an exemption from tax that is currently available to the Payee under any applicable double taxation agreement. In so far as the Payer may be obligated to withhold taxes due to the Payee failing to furnish documentary proof or certification of exemption under such double taxation agreement (or under such other applicable treaties and laws or on such other forms required from time to time by any taxing authority), to the satisfaction of the relevant taxing authority, the Payer, in that case, will be entitled to withhold such tax and consequently the payments to the Payee will be net of such withholding taxes provided only that the Payer keeps the Payee informed of:

- (a) any obligation of the Payer to withhold;
 - (b) any directive that may be given to the Payer by such taxation authorities; and
 - (c) the amounts from time to time withheld by the Payer and paid to such taxation authorities.
- (c) The Payee must provide such forms or declarations as often as legally required to exempt such payments from any withholding tax. If the Payer is obligated to withhold taxes as provided in this clause 23, the Payer shall provide a consolidated tax deduction certificate within 90 days from the end of the financial year to which the deduction pertains, to support a claim for a foreign tax credit under the laws of the country of the Payee.
- (d) Unless otherwise provided in this Agreement, the Marketing Carrier will be responsible for and must pay or reimburse the Operating Carrier for and indemnify the Operating Carrier against all Taxes, charges, and other imposts of whatever kind (including any fine or penalty imposed in connection therewith) levied, assessed, charged or collected in connection with the Marketing Carrier's traffic carried by the Operating Carrier under this Agreement, payments made under this Agreement, or the services performed by the Operating Carrier for the Marketing Carrier pursuant to this Agreement but excluding corporate income taxes measured by gross or net income of the Operating Carrier.

212 Indirect Taxes

- (a) Notwithstanding any other clause in this Agreement, any charge or other amount payable under this Agreement ("**Base Amount**") for the supply of any goods, services or other things, under this Agreement is stated as exclusive of all Indirect Taxes including but not limited to Service Tax, Value Added Tax, Excise Duty, Customs Duty and Goods & Service Tax.
- (b) If Indirect Tax is imposed on any supply made pursuant to this Agreement, the recipient of the supply (being a Party to this Agreement) must pay, in addition to the Base Amount to which the Indirect Tax relates, an amount calculated by multiplying the prevailing Indirect Tax rate by the Base Amount (without any deduction or set-off). Any amount payable under this clause 23 is payable on the day and in accordance with the same payment procedures that payment of the Base Amount (or part of the Base Amount) for the supply that has given rise to the obligation to pay Indirect Tax, is required pursuant to this Agreement.

- (c) Where this Agreement specifies that a Party must pay for a good or service from a third party that Party must also pay any Indirect Tax which is payable to the third party or otherwise in connection with those goods or services, unless expressly stated otherwise.
- (d) The Parties agree to use reasonable efforts to issue a tax invoice as required by the relevant Indirect Tax legislation or any relevant rulings or guidelines, and to do anything else which may be required to enable or assist the other Party to claim or verify any input tax credit, set off, rebate or refund in respect of any Indirect Tax paid or payable in connection with supplies under this Agreement.

22. Independent contractors

The Parties confirm that their relationship under this Agreement is that of independent contractors and nothing contained in or relating to this Agreement is intended or shall be construed to create or establish a partnership or joint venture.

23. Force Majeure

23.1 Definition

In this clause 23 (Force Majeure), force majeure will mean any cause preventing either Party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of (and not reasonably foreseeable or capable of being planned for by) the Party so prevented after the exercise of reasonable diligence (which, for the avoidance of doubt, in the case of either Party includes the maintenance at all times of disaster recovery plans expected of competent persons in the airline industry), including strikes, lockouts or other industrial disputes (whether involving the workforce of the Party so prevented or of any other party), act of God, war or war-like conditions, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, act of terrorism, global pandemic, breakdown of plant or machinery, disruption of communication, fire, flood or storm, natural calamity (including but not limited to excessive or unusual weather conditions) provided that:

- (a) neither lack of funds, nor an intentional act or omission of that Party or misconduct by any third party employed or engaged as an agent or independent contractor by that Party will be interpreted as a cause beyond the reasonable control of that Party; or
- (b) mere shortage of materials, equipment or supplies will not, of itself, constitute force majeure,

unless caused by events or circumstances which are themselves Force Majeure.

23.2 Failure to perform

If either Party is prevented or delayed in the performance of any of its obligations under this Agreement (other than its obligations under clause 23) by Force Majeure, that Party will:

- (a) on becoming aware of the Force Majeure, promptly serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to Force Majeure, the date of commencement of, the expected duration of, and the obligation affected by the Force Majeure;
- (b) subject to service of such notice and to clause 23.4, have no liability in respect of the performance of such of its obligations as are prevented by the Force Majeure events during the continuation of such events, and for such time after they cease as is necessary for that Party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations; and
- (c) after the cessation of the Force Majeure, promptly notify the other Party in writing of the cessation of the Force Majeure and resume performance of its obligations under this Agreement.

23.3 Long term failure

If either Party is prevented from performance of its obligations under this Agreement by Force Majeure for a continuous period in excess of sixty (60) days, the other Party may terminate this Agreement upon giving thirty (30) days written notice of termination to the Party so prevented, in which case neither Party will have any obligations, rights or liabilities to the other except any obligations, rights and liabilities which have accrued prior to the date of such termination or claims which a Party may have against the other for prior breach of this Agreement, and termination will not affect any provision of this Agreement which is expressly or by implication provided to come into effect on or continue in effect after such termination.

23.4 Reasonable Endeavours

The Party claiming to be prevented or delayed in the performance of any of its obligations under this Agreement by reason of Force Majeure will use all reasonable endeavours to mitigate the effects of the cause on that Party's obligations under this Agreement and perform its obligations under this Agreement on time despite the continuance of the Force Majeure event.

24. Waiver

- 24.1 Any delay, failure or forbearance by a Party to exercise (in whole or in part) any right, power or remedy under, or in connection with, this Agreement shall not operate as a waiver of such right, power or remedy. A waiver of any breach of any provision of this Agreement shall not be effective unless that waiver is in writing and is signed by the Party against whom that waiver is claimed.
- 24.2 Any waiver by either Party of performance of any obligation in this Agreement on the part of the other Party will not affect the right of the first named Party to require strict compliance of the other Party with any other obligation in this Agreement and shall not be, or be deemed to be, a waiver of any other or subsequent breach.

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25. Term

25.1 Effective Date

Subject to the granting of all necessary governmental and regulatory approvals, this Agreement shall commence on 01 October 2012 (the **Effective Date**) and shall remain in full force and effect until terminated in accordance with the provisions of clause 26.

25.2 Status of tickets on termination

- (a) The Marketing Carrier in respect on any Code-shared Flight will not market, offer for sale, or sell, any further tickets on that Code-shared Flights from the date on which the Agreement is terminated.
- (b) The Parties agree to honour tickets issued by either Party prior to the termination of the Agreement, for transportation on a Code-shared Flight subject to mutually agreeable terms.

26. Termination

26.1 Termination without cause

This Agreement may be terminated by either Party:

- (a) at any time following the Effective Date upon giving at least three (3) calendar months written notice to the other Party; or
- (b) immediately, with written notice in the event any requisite government approval, authority, licence or permit necessary for the operation is revoked or withdrawn.

26.2 Event of Default

In this clause 26 (Termination), an Event of Default will occur in respect of a Party (the **Defaulting Party**) if:

- (a) It commits any breach of this Agreement and does not remedy same within one (1) calendar month of receipt of written notice of such breach from the other Party (the **Non-Defaulting Party**);

Notwithstanding the above provisions of this clause 26.2(a), it is understood and agreed that billing defaults (known as billing disputes) will be dealt with in accordance with standard revenue accounting procedures and within prescribed time limits as set out in the IATA Revenue Accounting Manual (RAM) and shall not be termed an Event of Default.

- (b) it is subject to an Insolvency Event;

- (c) either:

- (i) that Party's Air Operators Certificate or International Air Services Licence or any equivalent or replacement certificate or licence is suspended, revoked or expires without being replaced; or

- (ii) it breaches any civil aviation safety obligation (whether imposed by statute, regulation or otherwise) which has or will have a material adverse effect on the Non-Defaulting Party;

26.3 Termination

Either Party may, by written notice to the other Party, immediately terminate this Agreement if an Event of Default occurs under any of clauses 26.2(a), 26.2(b), or 26.2(c).

26.4 Material Adverse Effect

For the purposes of clause 25.2(c)(ii), something having a "material adverse effect" on a Non-Defaulting Party is a reference to it having a material adverse effect:

- (a) on the current or future financial benefits accruing to the Non-Defaulting Party or any of its related companies under this Agreement; or
- (b) on the current or future operations of the Non-Defaulting Party or any related company of the Non-Defaulting Party.

26.5 Consequences of termination

- (a) On termination of this Agreement, both Parties will:
 - (i) immediately cease the use of the other Party's trade marks and other intellectual property;
 - (ii) ensure that the flight designator of the Marketing Carrier is removed from all CRS', timetables, displays, schedules and other publications in relation to all previous Code Share Flights with effect as soon as is reasonably possible (in relation to computerised publication) and with effect from the next published edition (in relation to printed publications);
 - (iii) immediately use its commercially reasonable efforts to notify all customers who have purchased tickets, any portion of which is unused that the Marketing Carrier prefix no longer applies to that flight nor does that flight have any association with the Marketing Carrier and to ensure that no tickets are subsequently issued which show a code of the Marketing Carrier pursuant to this Agreement; and
- (b) In the event of termination, the terminating Party shall incur no liability for any expenses, costs or damages of any kind incurred by the other Party as a consequence of such termination or any compensation by reason thereof as long as the notice of termination is given in accordance with the provisions of this Agreement.
- (c) The termination of this Agreement howsoever caused will be without prejudice to any obligations, rights or liabilities of any of the Parties which have accrued prior to the date of such termination or claims which a Party may have against the other for prior breach of this Agreement and will not affect any provision of this Agreement which is expressly or by implication provided to come into effect on or continue in effect after such termination.

26.6 Merger or change of control

In the event that after the Effective Date either Party acquires or gains controls of another entity which is engaged in air transportation or merges with such other entity or if the direct or indirect beneficial ownership of either Party is acquired or held by a legal entity that is not a party to this Agreement, it shall without delay inform the other Party of any potential acquisition, acquisition of control or like transaction. The other Party, then, shall have the rights to review this Agreement or at its option to terminate this Agreement. The effect and consequences of termination will be in accordance with clause 26.5.

27. Confidential information

27.1 Confidential Information

Subject to clause 27.2, each Party will at all times keep confidential all information of whatever nature which has been or may be received or obtained as a result of negotiating, entering into or performing this Agreement which:

(a) relates to this Agreement, the provisions, or subject-matter of this Agreement or any document referred to in this Agreement; or (b) is identified as being information that would reasonably be understood as being confidential information and which pertains to either Party and their respective business operations, (**Confidential Information**), and will not directly or indirectly make or allow any disclosure or use to be made of the Confidential Information, and will use all reasonable endeavours to prevent the use or disclosure of Confidential Information by any person.

27.2 Exceptions

The obligations contained in clause 27.1 do not apply to:

- (a) disclosures that are reasonably required by a Party to obtain or maintain any regulatory approvals or consents necessary in relation to this Agreement;
- (b) disclosures to directors, officers or employees of the Party, whose function requires that such information is disclosed to the same for the purposes of or in connection with this Agreement;
- (c) disclosures to legal advisers, bankers, auditors and other consultants of the Party requiring the information for the purposes of advising that Party in connection with this Agreement;
- (d) disclosures with the prior written consent of the Party who supplied the information;
- (e) information which is lawfully in the possession of the recipient of the information through sources other than the Party who supplied the information free of restriction as to its use or disclosure;
- (f) disclosures pursuant to any order or direction of a court or any tax authority; or

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- (g) disclosures required by law or a stock exchange, and then only after advising the other Party of that requirement;
- (h) if the information is strictly and necessarily required to be disclosed in connection with either legal proceedings or applications to any regulatory bodies or authorities relating to this Agreement, and then only after advising the other Party of that requirement (save that no such notification will be required where such notification is prohibited by law); or
- (i) to the extent that the information is or becomes available in the public domain without breach by a Party of its confidentiality obligations under this clause.

27.3 Disclosure of Information

A Party disclosing Confidential Information under clauses 27.2 (a), (b) or (c) must use all reasonable endeavours to ensure that persons receiving Confidential Information from it do not disclose the information except in the circumstances permitted in clause 27.2.

27.4 Use of Information

Each Party may only use the Confidential Information to the extent necessary to obtain the benefit of, or to carry out obligations under this Agreement but for no other purpose whatsoever.

27.5 Return of Information

Following termination of this Agreement, each Party will (upon request by the other Party) immediately deliver to the other Party or, with the written consent of the other Party, destroy all Confidential Information (including all copies or reproductions of the same and all material referring to any Confidential Information) within that Party's possession or control (with the exception of board papers and all other records that the Party is by law obliged to retain) or in the possession or control of persons who have received Confidential Information from it under clauses 27.2(a), (b) or (c), together with a certificate signed by an authorised person of the relevant Party confirming that the information returned or destroyed (as the case may be) comprises (with the exception of board papers and all other records that the Party is by law obliged to retain) all the Confidential Information held by that Party.

27.6 Survival of obligations

This clause will continue to bind a Party for a period three (3) years, after the Termination of this Agreement.

28. Non-exclusive Agreement

This is a non-exclusive Agreement and does not prevent either Party from entering into or maintaining existing marketing arrangements or code-share arrangements with any other airline.

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29. Notices

- 29.1 All notices, requests, demands and other communications under this Agreement shall be in writing and shall (unless otherwise expressly set out in this Agreement or the Appendices) be delivered personally (including by courier) or mailed by registered mail, or given by facsimile transmission or communicated via e-mail to the designated representative(s) at the addresses set out hereunder (or to such other address as a Party may specify by notice given to the other pursuant to this provision) and shall be deemed to be received when so delivered.

(a) In the case of Jet Airways to:

Jet Airways (India) Limited
Siroya Centre, Sahar Airport Road,
Andheri (E), Mumbai, 400099
India

Attn : Mr. Raj Sivakumar
Sr. Vice President - Planning & Alliances
Facsimile : +91 22 61211673
E-Mail : rsivakumar@jetairways.com

(b) In the case of South African Airways to:

South African Airways
Jones Road
Airways Park
Private Bag X 13
OR Tambo International Airport
South Africa
1627

Attn : Ms. Gwen Matshego
Executive Manager Alliances
Facsimile : +2711 978 1725
Email : gwenmatshego@flysaa.com

- 29.2 Any changes to the above addresses or numbers shall be immediately notified in writing to the other Party.

- 29.3 If not hand delivered, such notices shall be sent by prepaid registered mail or facsimile. A notice sent by mail shall be deemed to be delivered seven (7) business days after the date of mailing. A notice sent by facsimile or e-mail shall be deemed to be delivered on the business day following transmittal.

30. Successors and assigns

30.1 Successors

This Agreement shall be binding on and inure for the benefit of the Parties and their respective successors and permitted assigns (which shall include any successor by merger, consolidation or transfer, or purchase of substantially all the assets of either Party).

30.2 No Assignment without consent

Neither Party may assign or transfer all or part of their respective rights or obligations under this Agreement without the prior written consent of the other Party.

31. Modifications, amendments and waivers

At any time, to the extent permitted by law:

- (a) the Parties may, by written agreement, modify, amend or supplement any term or provision of this Agreement; and
- (b) any term or provision of this Agreement may be waived in writing by the Party which is entitled to the benefits of that term or provision.

32. No third party beneficiary

Nothing in this Agreement is intended, or shall be construed, to confer upon or give any person other than the Parties and their respective successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

33. Severability

If any provision of this Agreement is, or becomes, unenforceable, illegal or invalid for any reason, the relevant provision shall be deemed to be modified to the extent necessary to remedy such unenforceability, illegality or invalidity or if this is not possible then such provision shall be severed from this Agreement, without affecting the enforceability, legality or validity of any other provision of this Agreement.

34. Entire agreement

From the Effective Date this Agreement constitutes the entire understanding and agreement of the Parties in relation to the matters set out herein. Accordingly, this Agreement supersedes and extinguishes all prior agreements and understandings between the Parties in relation to said matters.

35. Miscellaneous

35.1 Government Regulations

The terms and conditions of this Agreement shall always be in accordance with the law (including government rules, regulations and orders) of the countries of the Parties or of other countries concerned or interstate conventions and / or arrangements. If such is not the case, the Parties shall confer in order to amend the Agreement to the required extent or to find jointly any other solution suitable to the continuation of the Code-shared Flights.

35.2 **Counterparts**

This Agreement may be executed simultaneously in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

35.3 **Consultation**

The Parties agree that the management and personnel of each Party shall consult and co-operate with each other to ensure uninterrupted and efficient operation of the Code-shared Flights pursuant to this Agreement, including designation of persons or officers to give and receive the various notices permitted under this Agreement.

35.4 **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of England.

35.5 **No Reliance**

Each Party acknowledges to the other that it has not been induced to enter into this Agreement by, nor has it relied upon, any representation, promise, assurance, warranty or undertaking (whether in writing or not) by or on behalf of the other Party or any other person, save for those contained in this Agreement. Nothing in this Agreement shall exclude liability for fraud or fraudulent misrepresentation.

Execution

The Parties hereto have caused their duly authorized representatives to execute this Agreement on this 01st day of October 2012

For and on behalf of:
South African Airways (PTY) LTD

NAME: Theunis Potgieter
TITLE: General Manager - Commercial

For and on behalf of:
Jet Airways (India) Limited

NAME: Nikos Kardassis
TITLE: Chief Executive Officer

NAME: Marc Cavaliere
TITLE: Head: Global Sales Development and Alliances

NAME: Raj Sivakumar
TITLE: Sr. VP - Planning and Alliances

APPENDIX A : CODE-SHARED ROUTES & SCHEDULES

1. General

- 1.1 This Appendix A shall constitute a part of the Code Share Agreement between Jet Airways (India) Limited and South African Airways Limited.
- 1.2 This Appendix will remain in force until altered by mutual agreement.
- 1.3 Terms not defined in this Appendix shall have the meaning attributed to them in the Agreement.
- 1.4 The Parties may, by mutual consent and without the requirement to formally amend the Code Share Agreement, add, discontinue, or substitute one or more city pairs on which they are or will operate Code Share Flights in accordance with the terms of this Agreement, subject to Government approval.

2. Code Share Schedule Operations

2.1 The Parties shall:

- (a) establish a dedicated flight number range for use by 9W and SA for use on the Code-shared Flights; and
- (b) establish an automated transfer of flight schedule information between both Parties, via and industry standard SSIM to allow efficient loading by both Parties of the Code-shared Flights prior to filing with OAG. Development to be done prior to or at the time of free sale automation; and
- (c) establish a communication procedure to advise the other Party of passenger re-accommodation plans in the event of schedule changes involving a Code-shared Flight.

3. Affiliate Flights

Jet Airways Affiliates covered under the Codeshare Agreement : None
 South African Airways Affiliates Covered under the Codeshare Agreement : None

4. Schedules and Equipment Changes

- 4.1 The Operating Carrier shall inform the Marketing Carrier by SSIM exchange, telex or e-mail of any planned schedule changes or major aircraft substitutions it may be required to make from time to time, as soon as reasonably possible to the following services:

[Handwritten signature]

SA to 9W : 9W Planning & Scheduling

E-mail: shreyad@jetairways.com
yddavid@jetairways.com
ndivekar@jetairways.com
planning@jetairways.com

9W to SA: SAA Scheduling and Distribution
 SITA: JNBRASA

E-mail:
saadistribution@flysaa.com
 (Generic e-mail address)
 (Adre Venter - Senior Manager
 Scheduling and Distribution)

Code-Shared Flights

9W will be the Operating Carrier, and South African Airways will be the Marketing Carrier, for the following Code-shared flights:

Route	Operating	Marketing	Frequency	Aircraft
BOMDEL	9W303	SA7678	1234567	B737
DELBOM	9W312	SA7679	1234567	B737
BOMMAA	9W463	SA7680	1234567	B737
MAABOM	9W470	SA7681	1234567	B737
BOMHYD	9W453	SA7682	1234567	B737
HYDBOM	9W452	SA7683	1234567	B737
BOMBLR	9W411	SA7684	1234567	B737
BLRBOM	9W442	SA7685	1234567	B737
BOMTRV	9W336	SA7686	1234567	B737
TRVBOM	9W337	SA7687	1234567	B737

All schedules are in local time

South African Airways will be the Operating Carrier, and 9W will be the Marketing Carrier, for the following Code-shared Flights:

Route	Operating	Marketing	Frequency	Aircraft
JNBOM	SA284	9W6300	1234567	330
BOMJNB	SA285	9W6301	1234567	330
JNBCPT	SA317	9W6302	1234567	738
CPTJNB	SA306	9W6303	123456	738
CPTJNB	SA308	9W6304	1347	738
JNBDR	SA543	9W6305	1234567	319
DRJNB	SA534	9W6306	123457	319
DRJNB	SA530	9W6315	123456	319

Code Share on the routes mentioned in this Clause 4, is subject to receipt of requisite government approvals.

5. Validity

This Appendix A becomes effective from the Effective Date and shall remain in force until amended in writing by the Parties.

For and on behalf of:
South African Airways (PTY) LTD

NAME: Manoj Papa
TITLE: Acting General Manager -
Commercial

For and on behalf of:
Jet Airways (India) Limited

NAME: Raj Sivakumar
TITLE: Sr. VP -Planning and Alliances

NAME: Marc Cavaliere
TITLE: Head: Global Sales
Development and Alliances

NAME: Nazneen Gagrat
TITLE: General Manager - Alliances &
Business Excellence

APPENDIX B - STATION PROCEDURES

1. General

- 1.1 This Appendix B shall constitute a part of the Code Share Agreement between Jet Airways (India) Limited and South African Airways Limited.
- 1.2 This Appendix will remain in force until altered by mutual agreement.
- 1.3 Terms not defined in this Appendix shall have the meaning attributed to them in the Agreement.

2. Ground Handling

- 2.1 The Operating Carrier shall be responsible for providing ground handling facilities and shall be charged for all costs attributable to handling as set out in the respective ground handling agreements between the Parties and their agent(s), or between the Parties (where the Marketing Carrier is providing ground handling services to the Operating Party).
- 2.2 The Operating Party's general regulations and special handling charges shall be applied to the Code-shared Flights including but not limited to cabin baggage, sporting equipment, unaccompanied minors, passengers with reduced mobility, medical cases, animals in cabin and cargo compartments, deportees, etc. unless otherwise agreed.

3. Check-In Procedures

- 3.1 The Operating Carrier or its handling agent will check in the Marketing Carrier's passengers at the Operating Carrier's check-in location, using the Operating Carrier's check-in system.
- 3.2 Economy and Business class passengers of both carriers will be checked in at separate, dedicated counters. The Operating Carrier will accept the Marketing Carrier's passengers entitled to use the Business counters at the respective desks.
- 3.3 For each class, the acceptance sequence for "revenue passengers" shall be:
 - (1) Confirmed (OK) passengers;
 - (2) Confirmed passengers on standby;
 - (3) No Recorded (NOREC) passengers;
 - (4) Waitlisted (WL) passengers;
 - (5) Go-Show (GOSHOW) passengers;
 - (6) OC's ID (Standby) passengers;
 - (7) OAL's standby passengers.

Subject to the acceptance sequence, all passengers will be accepted on a first come first service basis.

- 3.4 Both Parties will use Inter Airline Through Check-In (IATCI) procedures and protocol to facilitate the efficient handling of passengers connecting between Code-shared Flights.

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- 3.5. The Operating Carrier or its handling agent must advise the Marketing Carrier's passengers at check-in time that the flight is jointly operated as code share of SA and 9W.
- 3.6. The check-in agent will issue boarding passes showing the Operating Carrier's code and flight number. The bag tags will show the Operating Carrier's code and flight number only. The parties will endeavour to print the Marketing Carrier's flight number also on the boarding card of the Marketing Carrier's passengers, as and when feasible technically.
- 3.7. The reference numbers of members of the Marketing Carrier's frequent flyer / loyalty program are provided through the reservation system. If not provided or incorrect, the Operating Carrier or its handling agent will add or, if necessary, amend the Marketing Carrier's frequent flyer number into the passenger record in the Departure Control System at the time of check-in.
- 3.8. The Operating Carrier's Departure Control Systems shall transmit the relevant passenger data to the Marketing Carrier via the PFS.

SA to send to 9W address: HDQRM9W

9W to send to SA address: MUCPNSA

4. **Baggage Handling and Irregularities**

4.1 Baggage Acceptance

- a) Each Party will allow a maximum of Free Baggage Allowance as shown on the ticket.
- b) Checked in baggage shall be tagged to the final destination, as per IATA Resolution 780. The free checked baggage allowance shall be entered on the passenger ticket in accordance to IATA Resolution 302.
- c) For health and safety reasons, both Parties limit the maximum weight of any individual piece of checked baggage item to 32 kgs (70 lbs).
- d) Any applicable excess baggage charges will be applied at the first point of check-in as per the Operating Carrier's policy.

4.2 Cabin Baggage

The Operating Party's acceptance rules apply for all cabin baggage as detailed below:

On 9W operated International flights:

<i>Class of service</i>	<i>No. of pieces</i>	<i>Max weight</i>	<i>Maximum size</i>
First	2*	7 kgs p.p.	Total 115 cm (55x 35 x 25)
Business	2*	7 kgs p.p.	Total 115 cm (55x 35 x 25)
Economy	1	7 kgs p.p.	Total 115 cm (55x 35 x 25)

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*The 2nd piece can only be a laptop or a non rigid frame garment bag.

On 9W operated Domestic flights:

Class of service	No. of pieces	Max weight	Maximum size
Non ATR Flights-Business/Economy	1	7 kgs p.p.	Total 115 cm (55x 35 x 25)
ATR flights-Economy	1	7 kgs p.p.	Total 115 cm (50x 45 x 20)

On SA operated flights:

Class of service	No. of pieces	Max. weight	Maximum size
Business	2	8 kgs p.p.	Total 115 cm
Economy	1	8 kgs p.p.	Total 115 cm

4.3 Baggage Irregularities

4.3.1. The last Operating Carrier or its designated handling agent will perform the following activities in connection with baggage irregularities, under the last Operating Carrier's file reference:

- Preparation of the Property Irregularity Report (PIR) under the last Operating Carrier's reference,
- Final settlement of mishandled baggage cases is by the Operating Carrier.
- Initial tracing in case of temporary loss by the Operating Carrier or its handling agent
- Initial cash advance, according to the Operating Carrier's rules
- Handing over files after initial tracing period (7 days) to the Central Baggage Tracing Unit for further tracing. The files shall be sent to:

9W address: BOMLZ9W, preference is to send to HDQAP9W (action area)

SA address: JNBLZSA, preference is to send the HDQAPSA (action area).
- Preparation of OHD file for on-hand baggage and baggage left behind, considering the last carrier on the routing portion of the baggage tag as the Operating Carrier
- Handing over of OHD file and concerned baggage after initial holding period (7 days) to the Local Airport Manager of the Operating Carrier:

When 9W is OC : BOMLZ9W, preference is to send to HDQAP9W (action area)

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When SA is OC: JNBLZSA, preference is to send the HDQAPSA (action area).

4.3.2. All above activities shall be made according to the last Operating Carrier's rules, regulations and procedures. All costs resulting from above actions (such as, but not limited to, repair or direct settlement costs for damaged baggage, initial cash advance, delivery costs, etc.) shall be borne by the last Operating Carrier.

4.3.3. The last Operating Carrier will be responsible for the claim settlement in case of final loss of baggage.

5. Counter and Gate Signage

5.1 9W and SAA shall provide counter and gate signage reflecting the code share operations, where permissible and feasible, and shall endeavour to display the designator and flight numbers of both airlines on public information boards etc., where permissible and feasible.

5.2 All costs related to the signage referred to in clause 5.1 above shall be borne by the Operating Carrier.

5.3 Furthermore, subject to individual airport regulations the Operating Carrier or its handling agent will make the arrangements for the respective boarding and arrival announcements, referring to the codeshare operation where permissible and feasible.

6. Frequent Flyer Program

6.1 Conditions and benefits for the acceptance of the members of both Parties frequent flyer programmes shall be in accordance with the terms set out in a reciprocal frequent flyer programme agreement between the Parties.

7. Airport Lounges

7.1 Business class Code-shared Flight passengers travelling on the Marketing Carrier's flight number will have access to the designated business class airport lounges, at locations where such a lounge is provided to the Operating Carrier's passengers travelling in a similar class, without any additional charge. Use of either Parties' lounges by other passengers, such as frequent flyer program members, shall be subject to a separate agreement between the Parties.

8. Inadmissible Passengers

8.1 The Operating Carrier reserves the right to deny at the departing airport the boarding to any passenger with incomplete travel documents.

8.2 In principle, the last Operating Carrier bears the final responsibility in accordance with the provisions of Annex 9 ("Facilitation") of the Chicago Convention dated December 7th, 1944 and of the IATA resolution No. 701 for the admission of all passengers on board of the aircraft and for the checking of all passengers' travel documents before each flight is performed.

8.3 As a consequence, any cost (such as fines, detention cost, hotel accommodation and/or outbound carriage cost including possible escort) incurred in application of any law and associated directly or indirectly with the refused admission of any

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passenger carried by the aircraft on the route concerned shall be paid by the Operating Carrier.

9. Validity

This Appendix B becomes effective from the Effective Date of the Codes Share Agreement and shall remain in force until amended in writing by the Parties.


For and on behalf of:
South African Airways (PTY) LTD

For and on behalf of:
Jet Airways (India) Limited


NAME: Theunis Potgieter
TITLE: General Manager - Commercial


NAME: Raj Sivakumar
TITLE: Sr. VP - Planning and Alliances.


NAME: Marc Cavaliere
TITLE: Head, Global Sales Development and Alliances


NAME: Nazneen Gagrati
TITLE: General Manager - Alliances & Business Excellence




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APPENDIX C – RESERVATION AND SPECIAL SERVICE REQUIREMENTS

1. General

- 1.1 This Appendix C shall constitute a part of the Code Share Agreement between Jet Airways (India) Limited -and South African Airways Limited.
- 1.2 This Appendix will remain in force until altered by mutual agreement.
- 1.3 Terms not defined in this Appendix shall have the meaning attributed to them in the Agreement.

2. Seat Capacity Control

- 2.1 The control of the total seat capacity is the responsibility of the Operating Carrier. Bookings shall be accepted on a 'first come, first served' basis out of the jointly linked inventories.
- 2.2 To enable free sale of the codeshare, it is necessary that booking classes on the Code-shared Flights be mapped. This mapping will be as mutually agreed upon in the Special Prorate Agreement between the Parties.

3. Advanced Seat Selection

- 3.1 The Operating Carrier shall, where reasonably practicable honour seat requests made for the Marketing Carrier's passengers.
- 3.2 Seat requests can be made with generic entries (NSSW/NSSA) or requesting a specific seat number if the seat map of the Operating Carrier's flight is available (RQST).

4. Special Services

- 4.1 Medical cases (MEDA/OXYG, STCR, WCHC, INCUBATOR), deportees (DEPA/DEPU), animals voyaging in hold (AVIH), unaccompanied minors (UMNR), weapon and persons in custody (WEAP), shall not be part of this Agreement, but will always be booked directly with the Operating Carrier.
- 4.2 All special service requests (SSRs) can be booked according to agreed bilateral agreement between both Parties as defined in clause 8 "Special Service Requirement", of this Appendix C.

5. Group Acceptance

Group bookings need to be requested with the Operating Carrier directly, and will not be allowed under the Marketing Carrier's flight designator.

6. Passenger Handling & Reservation Control

- 6.1 Each Party is responsible for controlling bookings made under its designator in a way which allows maximum use of the sales potential of a flight.

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6.2 If for this purpose it becomes necessary to cancel some segments without the consent of the passenger, each Party will do so only for those booked under its own booking designator.

6.3 The operating carrier is allowed to make checks on double bookings. In case a Marketing Carrier's PNR is detected as a dupe, the Operating Carrier will notify such booking to the Marketing Carrier but will not cancel the PNR.

9W to inform SA of such cases at: SAACodeshareSupport@flysaa.com

SA to inform 9W of such cases at: rmsupport@jetairways.com

6.4 The Operating carrier will perform flight firming for the marketing flight reservation by using its own procedures. In case there is a high number of no show resulted from the insufficient action by the Marketing carrier, the Operating carrier can request the Marketing carrier to perform the flight firming and the Marketing carrier shall fully cooperate with the Operating carrier in order to reduce the high number of no show passengers.

9W to inform SA at: SAACodeshareSupport@flysaa.com

SA to inform 9W at: rmsupport@jetairways.com

7 Database Maintenance of Flights and Schedule Changes / Irregularities

7.1 The Operating Carrier shall advise planned Schedule/Aircraft Changes on their operating flights at the earliest possible time. Such messages shall be sent to:

9W shall advise SA vide email at:

SAADistribution@flysaa.com

SA shall advise 9W vide email at:

planning@jetairways.com &
scheduling@jetairways.com

7.2 The Operating Carrier must make sure that the Marketing Carrier is informed about all Flight / Schedule changes as well in advance as practicable.

8 Special Service Requirements (SSR)

8.1 Special service requirements will be exchanged as shown in the table hereafter:

	SA Operated				9W Operated			
	NN	SS	HK	Not used	NN	SS	HK	Not used
AVIH				X	X#			
AVML	X				X			
BBML	X				X			
BIKE	X				X			
BLML	X				X			
BLND	X				X			

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	SA Operated				9W Operated			
	NN	SS	HK	Not used	NN	SS	HK	Not used
BSCT	X				X			
BULK				X				X
CBBG				X	X			
CHML	X				X			
CKIN			X				X	
CLID				X				X
COUR				X				X #
CRUZ				X				X
DBML	X				X			
DEAF	X				X			
DEPA				X	X#			
DEPU				X	X#			
DIPB				X	X			
DOCA			X			X		
DOCO			X			X		
DOCS			X			X		
EXST				X	X			
FPML	X				X			
FQTR				X			X	
FQTS				X				X
FQTU				X				X
FQTV			X				X	
FRAG				X	X#			
FRAV				X				X


 11

PSM

	SA Operated				9W Operated			
	NN	SS	HK	Not used	NN	SS	HK	Not used
GFML	X				X			
GPST				X	X #			
GRPF				X			X #	
GRPS				X			X #	
HFML				X				X
HNML	X				X			
INFT	X					X		
KSML	X				X *			
LANG			X				X	
LCML	X				X			
LFML	X				X			
LPML				X				X
LSML	X				X			
MAAS	X						X	
MEDA				X	X #			
MOML	X				X			
NLML	X				X			
NSSA	X				X			
NSSB	X				X			
NSST	X				X			
NSSW	X				X			
OTHS			X		X			
PCTC				X				X
PETC				X				X

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	SA Operated				9W Operated			
	NN	SS	HK	Not used	NN	SS	HK	Not used
PSPT								X
RQST	X				X			
RVML	X							X
SEMN			X				X	
SFML	X				X~			
SMSA				X				X
SMSB				X				X
SMST				X				X
SMSW				X				X
SPEQ				X	X			
SPML	X				X			
STCR				X	X			
TKNA				X			X	
TKNC				X				X
TKNM				X			X	
TKTL								X
TWOV				X				X
UMNR	X				X#			
VGML	X				X			
VJML	X				X			
VLML	X				X			
VOML	X				X			
WCHC				X	X			
WCHR	X				X			

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	SA Operated				9W Operated			
	NN	SS	HK	Not used	NN	SS	HK	Not used
WCHS				X	X			
WCOB				X	X			
WEAP				X	X #			
XBAG				X	X			

Note :

=> Can be booked only on Operating Flight Number

* => Available on select sectors only, 24 hrs notice required

~ => Available on international flights in First & Premiere class Lunch/Dinner services

8.2 Conditions of acceptance when 9W is the Operating Carrier

CODE	Comments
AVIH	International: Domesticated Dogs and Cats only. Not allowed on flights into/departing UK, HKG, DMM, RUH, JED or flights arriving into TRV/CCJ/COK. Excess baggage charges apply. Advise type of animal, container dimensions and total weight,
BSCT	Limited number (6 on the B777 and 2 on the A330) available in economy. Weight limitation of 11 kgs (24.25 lbs). Assignment is controlled in the booking by 9W RM Support team on a first requested-first assigned basis.
BIKE	Excess baggage charge applies if beyond free baggage allowance for both weight and piece concept. Non-motorized touring or racing bicycles to be carried as luggage on Boeing and Airbus flights only. The bicycle must be packed in a "bike box" or protective packaging. The handle bars must be turned sideways and the pedals detached.
BLND	Advance notice not required. Guests who have both a sight and hearing disability may require a safety attendant. Emergency exit seats cannot be assigned
CBBG	Must be booked under operating carrier's flight number
CHLD	Age: 2 years through 11 years.
DEAF	Advance notice not required. Guests who have both a sight and hearing disability may require a safety attendant. Emergency exit seats cannot be assigned.
DEPA	Must be booked under operating carrier's flight number

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DEPU	Must be booked under operating carrier's flight number
EXST	Same fare as paid by the passenger must be collected.
FRAG	Must be booked under operating carrier's flight number
INFT	<p>Age: Under 2 years and above 7 days. Infants under 7 days requiring to travel for life-saving treatment may be accepted on the operating flight number under the MEDA policy.</p> <p>Each infant must be accompanied by a passenger at least 18 years of age, unless the accompanying passenger is the parent of the child. Restrictions on the total number of infants on an aircraft apply.</p> <p>Use of Infant car-seats is not permitted.</p>
MEDA	Must be booked under Operating Carrier's flight number. Medical clearance to be requested via SSR MEDA. INCAD information to be advised
PETC	Not accepted. Service animals are not considered PETC.
SPEQ	Type of equipment, total weight and dimensions to be advised. Excess baggage may apply, depending on type of equipment.
Service Animals	Service dogs only. Allowed in the cabin on routes operated by aircraft types B737, A330 and B777 if accompanying a person with a disability. Prior notice is not required.
STCR	Must be booked under operating carrier's flight number.
UMNR	International: above 6 yrs and under 12 yrs
WCHC	Maximum number accepted on an aircraft is restricted due to safety regulations. In case of medical reasons, doctor's certificate or medical approval may be required
WEAP	Must be booked under operating carrier's flight number
XBAG	Advise weight, number of pieces, dimensions.
Expectant Mothers	<p>The operating carrier's policy applies.</p> <p>Domestic India sectors and Dhaka, Colombo & Kathmandu only</p> <p>a) Single uncomplicated pregnancies:</p> <p>Maybe permitted to fly till the start of 32nd week without a medical certificate.</p> <p>Maybe permitted to fly till the end of 36 weeks provided there are no prior / present complications. However a certificate from treating obstetrician is required from the</p>

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start of 32 weeks stating number of weeks the pregnancy has advanced and that the expectant mother is fit to travel by air & that there are no complications.

Maybe permitted to fly after the end of 36th week till end of 38th week provided the expectant mother has a 'Fitness to Fly' certificate / MEDIF from her treating obstetrician duly approved by 9W Medical Dept and she is accompanied by at least an MBBS doctor. Flying is not permitted under any circumstances after end of 38th week of pregnancy.

b) Multiple uncomplicated pregnancies:

Cases of multiple uncomplicated pregnancies may be accepted up to the end of the 32nd week ONLY after getting approval from 9W Medical Dept (on case-to-case basis) and in some cases the expectant mother may have to be accompanied by at least an MBBS doctor.

c) Complicated/high risk pregnancies

All cases of complicated / high-risk pregnancies would be permitted to fly ONLY after getting approval from 9W Medical Dept (on case-to-case basis) and in some cases the expectant mother may have to be accompanied by at least an MBBS doctor.

Other international sectors (To/from Middle East/Africa/Europe/N. America/Far East)

a) uncomplicated single pregnancy: no medical certificate required if travelling within 28 weeks of pregnancy (calculated based on the expected date of delivery). From 29th week till end of the 35th week, a medical certificate & 9W Medical Department's clearance is required. Flying not permitted after the 35th week.

b) Uncomplicated Multiple Pregnancy: No medical certificate required if travelling within 28 weeks of pregnancy (calculated based on the expected date of delivery). From the 29th week till the end of the 32nd week, flying is permitted provided the passenger is carrying a fit to fly certificate by her treating obstetrician and is accompanied by a doctor with at least an M.B.B.S. degree (US equivalent MD). Flying not permitted after the 35th week.

c) Complicated/High Risk pregnancies: Medical certificate required. Flying not permitted after the 32nd week. Medical clearance from 9W Medical Department required, decided on a case to case basis. In some cases, a medical escort may be deemed necessary.

Post delivery

The mother is permitted to fly along with her baby only after 7 days from the date of delivery of the baby.

Following a normal delivery, in the absence of any

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	<p>complications, the mother may be permitted to fly 48 hours after delivery provided she has a 'Fitness to Fly' certificate from her treating obstetrician. However, following a Caesarean section, the guest would be permitted to fly after one week and would need a letter from her Obstetrician stating that she is fit to fly.</p> <p>However, in an exigency wherein life saving treatment is mandatory for the infant, the mother may be permitted to fly with the new born provided the newborn is certified fit to fly by the concerned pediatrician and is accompanied by at least an MBBS doctor. Whilst making a booking, also advise the reservations department about your travel.</p>
Persons in custody	Must be booked under Operating Carrier's flight number

8.3 Conditions of acceptance when SA is the Operating Carrier

CODE	Comments
AVIH	Not accepted
BSCT	On request
BIKE	Excess baggage charge applies if beyond free baggage allowance for both weight and piece concept. Non-motorized touring or racing bicycles to be carried as luggage on Boeing and Airbus flights only. The bicycle must be packed in a "bike box" or protective packaging. The handle bars must be turned sideways and the pedals detached.
BLND	Advise if travelling with a service dog
CBBG	Must be booked under operating carrier's flight number
CHLD	Age: 2 years through 11 years.
DEAF	Advise if travelling with assist animal
DEPA	Must be booked under operating carrier's flight number
DEPU	Must be booked under operating carrier's flight number
EXST	Must be booked under operating carrier's flight number
FRAG	Must be booked under operating carrier's flight number

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INFT	Age: Under 23 months years and above 7 days. Restrictions on the total number of infants on an aircraft apply.
MEDA	Must be booked under Operating Carrier's flight number.
PETC	Not accepted
SPEQ	Type of equipment, total weight and dimensions to be advised. Excess baggage may apply, depending on type of equipment.
STCR	Must be booked under operating carrier's flight number.
UMNR	Special handling procedures apply to the conveyance of children under the age of 12 years and, at the request of the parent / guardian, to young passengers 12 years of age but under 16 years old who are not accompanied. (Such children are considered to be unaccompanied unless they are travelling with another passenger of 16 years of age or over). Children having attained the age of 5 years but who are under 12 years of age are regarded as unaccompanied minors (UM's). (Such children are not considered to be unaccompanied minors when they are accompanied by another passenger of 16 years of age or over).
WCHC	Must be booked under operating carrier's flight number Maximum number accepted on an aircraft is restricted due to safety regulations. Advise reason. In case of medical reasons, doctor's certificate may be required
WEAP	Must be booked under operating carrier's flight number
XBAG	Advise weight, number of pieces, dimensions.
Expectant Mothers	The operating carrier's policy applies. Domestic: Expectant mothers are permitted to fly till 36 weeks of pregnancy provided there are no prior complications. International: Expectant mothers are permitted to fly till 35 weeks of pregnancy provided there are no prior complications.
Persons in custody	Must be booked under Operating Carrier's flight number.

9 Charges

- 9.1 Both Parties agree to apply the Operating Carrier's charges in respect to special services granted.
- 9.2 If both Parties appear in the itinerary, the charges of the first Operating Carrier in the itinerary will apply.
- 9.3 Charges apply per through flight.

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10 Special Meals

10.1 SPML offered by 9W:

AVML, BBML, BLML, CHML, DBML, FPML, GFML, HNML, KSML, LCML, LFML, LSML, MOML, NLML, RVML, SFML, VGML, VJML, VLML, VOML

Special meal request should be made at least 24 hours prior to flight departure, except for KSML & SFML meals when the request must be made at least 48 hours prior to flight departure. SFML meals available only on international First & Premier Cabin

10.2 SPML offered by SA:

Special meal request should be made at least 24 hours prior to flight departure, except for Kosher (KSML) meals when the request must be made at least 48 hours prior to flight departure.

Special meals requested after cut-off time will be denied with NO and SSR OTHS Item - LATE MEAL REQUEST NOT ACCEPTED.

The following meals are provided on the services of SAA.

AVML, BBML, BLML, CHML, DBML, FPML, GFML, HNML, KSML, LCML, LFML, LSML, MOML, NLML, RVML, SFML, VGML, VJML, VLML, VOML.

11 General Coordination

All notices, demands, requests and/or other communications relating directly to this Appendix C shall, unless otherwise specified herein be addressed to the following :

	For 9W	For SA
ATTN.	Lucy Rocha	Michael Brewis
	Manager - Policies & Procedures	Manager - Revenue Integrity
SITA	BOMRZ9W	JNBQPSA
FAX	+ 91 22 6121 1673	+27 11 978 2764
TEL	+ 91 22 6121 1763	+27 11 978 6185
E-MAIL	lrocha@jetairways.com	saacodesharestsupport@flysaa.com michaelbrewis@flysaa.com

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12 Validity

This Appendix C becomes effective from the Effective Date of the Code Share Agreement and shall remain in force until amended in writing by the Parties.

For and on behalf of:
South African Airways (PTY) LTD

For and on behalf of:
Jet Airways (India) Limited


NAME: Theunis Potgieter
TITLE: General Manager - Commercial


NAME: Raj Sivakumar
TITLE: Sr. VP - Planning and Alliances.


NAME: Marc Cavallere
TITLE: Head: Global Sales
Development and Alliances


NAME: Nazneen Gagrani
TITLE: General Manager - Alliances &
Business Excellence




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APPENDIX D - REVENUE ACCOUNTING PROCEDURES

1 General

- 1.1 This Appendix D shall constitute a part of the Code Share Agreement between Jet Airways (India) Limited and South African Airways Limited.
- 1.2 This Appendix will remain in force until altered by mutual agreement.
- 1.3 Terms not defined in this Appendix shall have the meaning attributed to them in the Agreement.

2 Flight Coupons

- 2.1 The Operating Carrier shall retain all flight coupons for processing and all flown revenue derived from those flight coupons shall accrue to the Operating Party, subject to the terms and conditions of the Special Prorate Agreement (SPA) or the IATA Multilateral Interline Agreement between the Parties, as applicable.
- 2.3 Interline billing shall be performed according to the IATA Multilateral Interline Traffic Agreement and the SPA between the Parties, both as amended from time to time.

3 Frequent Flyer Programme Tickets

Frequent Flyer program redemption tickets shall be in accordance with the terms set out in the reciprocal frequent flyer programme agreement between the Parties.

4 Financial Settlement

- 4.1. The Operating Carrier shall process all retained flight coupons and determine the gross revenue to be billed after proration to the Marketing Carrier according to the provisions stated in the Special Prorate Agreement effective between the Parties.
- 4.2. The Operating Carrier shall bill the Marketing Carrier for all coupons plated on the Marketing Carrier, including airport taxes, fees or charges, through IATA Clearing House (ICH) according to the rules of the Revenue Accounting Manual (RAM), as per regular interline ticket billing procedures and after deduction of the applicable Interline Service Charge (ISC) and any other charges mutually agreed upon between the Parties in the SPA.
- 4.3. In case of Marketing Carrier passengers plated on 3rd party carriers, the Operating Carrier shall bill the Marketing Carrier according to the SPA in place between the Parties.
- 4.4. Statements and settlements shall be expressed and effected in USD as per the ICH regulations.
- 4.5. Airport taxes due for embarkation on Code Share Flights shall always be paid to the authorities by the Operating Carrier for all passengers on board. The Operating Carrier shall debit the Marketing Carrier for their share of passengers according to interline ticketing billing procedures.

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- 4.6. Revenue derived from charge collected at time of departure for excess baggage and/or other related services (pets, etc) shall always be the revenue of the Operating Carrier.
- 4.7. Should the parties agree to collect the fuel surcharges a separate agreement will be concluded between the parties either under the SPA or as a Fuel Billing Agreement. Due to system restrictions this agreement will be applicable to all uplifted coupons on the relevant routes.

5. Accounting Procedures

- 5.1 The Operating Carrier shall send to the Marketing Carrier a monthly statement electronically in the subsequent ICH Period no later than six weeks after each traffic month. The monthly statement with the total amount of retained flight coupons (passengers carried) by the Operating Carrier on each Code Share Flight shall contain the following data: airline number, ticket number, coupon number, Operating Carrier flight number and designator code, Marketing Carrier flight number and designator code, date of uplift, gross coupon value, FBTD code, ISC value, CSC value and CSC percentage (as applicable) and issuing agent.
- 5.2 Flight coupons which are not included in the statement relative to the month of traffic, shall be reported in the next month's statement (i.e. for example flight coupons uplifted in November but not included in the November statement shall be reported in the December statement).
- 5.3 The monthly statements shall be considered final and used for billing purposes. Discrepancies, if any, shall be settled between the accounting offices of the Parties according to the normal IATA procedures. If agreement is not reached, the management of the Parties according to clause 19 (Settlement of Disputes) of the Agreement have to be notified immediately for final resolution.
- 5.4 The Marketing Carrier shall at any time, at its own costs, have the right to audit all figures and statements delivered by the Operating Carrier.
- 5.5 Both Parties shall obey the applicable time limits according to the rules of Revenue Accounting Manual.

6 Accounting Procedures (Settlement & Invoices)

- 6.1 The Operating Carrier shall, based on the monthly statements as per clause 5.1 above, credit the Marketing Carrier as per the values under the prevailing SPA Agreement through ICH via Category MISC in the same ICH Period of the statement.
- 6.2 A hard copy of the above credit note should accompany the statement and shall be dispatched along with other invoices.
- 6.3 The credit note will be included in the next IATA Clearance period month as the transaction/travel month, (i.e. June travel items to be included in the July IATA Clearance which closes at the end of July-08/ 01 August).
- 6.4 Should one or both Parties cease to be a member of the IATA Clearing House, settlement shall be determined by the Parties concerned in a written amendment to the Agreement in accordance with the Interline Traffic Agreement concluded between the Parties.

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7 Administration

All administrative matters relating to this Appendix D such as statements, settlements, handling of discrepancies and other correspondence shall be handled and dealt with between the accounting offices of the Parties.

The following addresses shall be used:

For SAA :	For Jet Airways :
Attn : Ms. Felicity Sekoto	Attn : Ms. Radhika Shekharan Manager - Revenue Accounts
Addr : South African Airways Room 510 C Block Airways Park	Addr : Jet Airways (India) Ltd. HDIL Kaladonia, 3 rd Floor, Andheri Sahar Road Andheri (E), Mumbai - 400 069
Fax : +2711 7871327 Tel : + 2711 9781240 E-Mail: felicitysekoto@flysaa.com	Fax : + 91 61212614 Tel : + 91 22 61212502 E-Mail: rshekharan@jetairways.com SITA: BOMAX9W

8 Validity

This Appendix D becomes effective from the Effective Date of the Codes Share Agreement and shall remain in force until amended in writing by the Parties.

For and on behalf of:
South African Airways (PTY) LTD

For and on behalf of:
Jet Airways (India) Limited


NAME: Theunis Potgieter
TITLE: General Manager - Commercial


NAME: Raj Sivakumar
TITLE: Sr. VP - Planning and Alliances.


NAME: Marc Cavaliere
TITLE: Head: Global Sales
Development and Alliances


NAME: Nazneen Gagrati
TITLE: General Manager - Alliances &
Business Excellence

Annexure “14”



Siza Mzimela

P O Box 224, Cornwall Hill Estate, 0178
e-mail: sizapm@flysaa.com

10 October 2012

Mr Vuyisile Kona
Chairperson
South African Airways
By Hand

Dear Vuyisile

Resignation

I confirm that you have announced via round robin to the new Board of Directors that my resignation is with immediate effect.

Accordingly, I am informing you that I will exit SAA with immediate effect.

Yours faithfully


Siza Mzimela

cc: Thuli Mpshe
General Manager, Human Resources

Annexure “15”





April 18, 2011

Mr. Tshediso Matona
Director General,
Department of Public Enterprises,
Suite 401, Infotech Building,
1090 Arcadia Street,
Hartfield 0083
South Africa.

Honorable Director General,

It was a pleasure and honor to meet you Sir on April 14.

Jet Airways commenced daily operations on Johannesburg - Mumbai route on April 14, 2010. Since then, it has become the preferred carrier in the South Africa - India market because of high service standards and reputation for quality. The market shares for Jet Airways, South African Airways (SAA) and Emirates (the third significant carrier in this market), and other carriers before and after Jet Airways' launch, is given below.

Carrier	Mumbai - Johannesburg		India - South Africa	
	Prior to Jet Airways Launch	July 2010 - Jan 2011*	Prior to Jet Airways Launch	July 2010 - Jan 2011*
Jet Airways	-	61%	-	40%
South African Airways	43%	20%	28%	16%
Emirates	36%	14%	61%	40%
Others	21%	5%	11%	4%

* January '11 is most recent month for which market share data is available

When Jet Airways reduced operations on this route, bulk of the market share did not move to SAA, but to Emirates. The continued rapid expansion of the Gulf carriers in South Africa - especially Emirates - will apply significant pressure on profitability of both carriers in the future. We understand Emirates in particular has concrete plans to add 50% more capacity in South Africa.

We are delighted to cooperate with SAA on all commercial aspects including enhanced Frequent Flier Program participation, and reciprocal lounge access. Jet Airways will use Johannesburg as the gateway to use SAA network to feed traffic to South Africa, Southern Africa and South America. The leadership position that Jet Airways enjoys in India and leadership position SAA enjoys in South Africa will greatly enable shifting market shares from the Gulf carriers to our mutual benefit.

Looking ahead, the following options could be explored, along with the profitability impact for each:

- Scenario 1: Status quo - currently existing "5 frequencies by Jet Airways + 4 frequencies by SAA" scenario. Jet Airways and SAA will code share on each other's flights in domestic India, and South Africa and Southern Africa and the trunk route, subject to relevant regulatory approvals. Subject to further studies and connectivity analysis, we estimate that the current losses will reduce by 10% under this scenario.

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JET AIRWAYS (INDIA) LIMITED

CONTINUATION SHEET

- Scenario 2. "4 frequencies by Jet Airways & 3 frequencies by SAA" scenario. Jet Airways and SAA will code share on each other's flights in domestic India and its neighboring countries, and domestic South Africa, Southern Africa and South America and the trunk route subject to relevant regulatory approvals. Subject to further studies and connectivity analysis, we estimate that the current losses will reduce by 30% under this scenario.
- Scenario 3. "7 frequencies per week flown by Jet Airways under Joint Venture arrangement" scenario. Jet Airways and SAA will enter into a Joint Venture arrangement that includes passenger and cargo revenue covering all traffic between South Africa, Southern Africa, South America and India, India's neighboring countries, and other Asian points. This Joint venture will be subject to approval of all regulatory authorities. With cost reductions and additional revenue potential, we estimate the Joint Venture to turn the current losses to a 10% profit margin, or more. Under the Joint Venture arrangement, the two carriers' networks will together be able to access more than 90% of the India-South Africa market.

Relationship between India and South Africa is already strong and getting better. The robust economies of both countries will fuel this growth further. I strongly believe a full-fledged cooperation between Jet Airways and SAA will become a catalyst for promoting trade and tourism. Increased cooperation between the two home carriers will also provide a unique opportunity to divert traffic from 3rd country carriers such as Emirates and other carriers who currently hold 44 % shares in the India - South Africa market

At Jet Airways, we are committed to a complete cooperation with South African Airways.

Sincerely,

Naresh Goyal

DR. PRADEEP K. BHARGAVA
 Chairman, Committee on
 Foreign Investment in India
 Government of India

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Annexure “16”



JET AIRWAYS 

Chairman

May 14, 2011

Mr. Tshediso Matona
 Director General,
 Department of Public Enterprises,
 Suite 401, Infotech Building,
 1090 Arcadia Street,
 Hartfield 0083
 South Africa.

Honorable Director General,

We are in receipt of your letter dated May 9. I sincerely appreciate your efforts to facilitate a resolution in the matter of cooperation between Jet Airways and South African Airways (SAA). As we have maintained throughout and tried to demonstrate multiple times with SAA, we are extremely keen on a "win win" partnership between the two carriers that is pro-consumer and complies with regulations of all respective authorities.

We have attempted to provide answers to your queries in this letter.

Annexure 1 provides a summary of relative market shares of the three key carriers on this route – Jet Airways, SAA and Emirates – along with the market shares of other carriers before and after Jet Airways entered this route. We have chosen the October – February period for this comparison since October 2010 was when Jet Airways settled into the currently-existing pattern of 5 frequencies per week. As you will see Sir, it is very evident that Jet Airways has successfully wrested market shares not only from SAA, but also from Emirates primarily due to our excellent service standards and quality. You will see from the tables that Emirates was a more dominant carrier in all of the market groupings, even before Jet Airways commenced operations (they are becoming even more dominant through addition of markets, frequencies and introduction of A380's). We strongly believe that a Jet Airways operation in full cooperation with SAA will offer the best chance to compete with Emirates and other Gulf carriers. This operation in a cooperative framework, will complement each others' strengths in the respective home markets and regions.

Annexure 2 provides a month-by-month breakup of market shares from the time Jet Airways launched its operations in April 2010 until February (the most recent month for which this data is available). Sir, we draw your attention to the market shares in July 2010. This was the last month in which Jet Airways operated a full week schedule and also the first month after the initial gestation period. You will see here that in three short months, Jet Airways achieved a leadership position in market shares, snatching significant shares not only from SAA, but also from Emirates. The other carriers' shares increased only after we started scaling down operations (by reducing one frequency per week in August and by one more in October).

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Annexure 3 provides a complete breakup of all market groups that contributed to the Jet Airways' Mumbai – Johannesburg service (ex. Mumbai – Southern Africa) and the traffic contribution from each of these market groups. As you will see here Sir, there is a robust collection of markets that will only be further enhanced and traffic increased if Jet Airways and SAA were to cooperate.

Annexure 4 provides a monthly breakup of the financial performance of Jet Airways on the Mumbai – Johannesburg – Mumbai route since we commenced operations in April, 2010. Despite the high market share and low cost structure, Jet Airways incurred loss of \$20M in 10 months. This clearly demonstrates that there isn't enough demand in the markets feeding this route to sustain 9 non-stop frequencies per week (between Jet Airways and SAA). Sir, it is important to note here that different airlines may use different formulas to allocate (prorate) revenues and costs to particular routes. Hence it is crucial to understand the mechanics of such cost and revenue "proration" and ensure consistency of the same before drawing conclusions.

We would like to accentuate our position by providing the following compelling statistic: With services (often times multiple) to all key destinations of India and South Africa, Emirates currently offers one-stop service (via Dubai) to 95% of the India-South Africa market. Individually, Jet Airways and SAA offer non-stop or one-stop coverage to only 60% of the markets. A joint Jet Airways-SAA operation will match Emirates in its coverage and reach. Sir, as you know, the other major Gulf carriers such as Qatar and Etihad also have aspirations similar to Emirates and are rapidly expanding not only in South Africa but all of Africa.

Jet Airways will use Johannesburg as the gateway to use SAA network to feed traffic to South Africa, Southern Africa and South America. The leadership position that Jet Airways enjoys in India and leadership position SAA enjoys in South Africa will greatly enable shifting market shares from the Gulf carriers to our mutual benefit. We eagerly look forward to this partnership.

I thank you once again for your efforts to facilitate a resolution in this matter. We await your advice on the next steps and date for the meeting.

With best regards,


Naresh Goyal

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Annexure I

THE "JET AIRWAYS EFFECT" ON MARKET SHARES - YEAR OVER YEAR CHANGE
 October 2010 - February 2011 vs October 2009 - February 2010
(Jet Airways has been operating 5 frequencies per week since October 2010)

	Mumbai - Johannesburg			India - South Africa		
	2009-10	2010-11	Change	2009-10	2010-11	Change
Jet Airways	0%	50%	50%	0%	32%	32%
South African Airways	48%	25%	-23%	29%	18%	-11%
Emirates	10%	20%	20%	61%	46%	-15%
Qatar/Ethiad	3%	1%	-2%	5%	2%	-3%
Kenyan/Ethiopian	9%	4%	-5%	5%	2%	-3%

	Rest of India - Johannesburg (excludes Mumbai)			Mumbai - Rest of South Africa (excludes Johannesburg)		
	2009-10	2010-11	Change	2009-10	2010-11	Change
Jet Airways	0%	16%	16%	0%	36%	36%
South African Airways	5%	5%	0%	49%	33%	-16%
Emirates	85%	74%	-11%	43%	28%	-15%
Qatar/Ethiad	8%	1%	-5%	4%	1%	-3%
Kenyan/Ethiopian	2%	2%	0%	4%	2%	-2%

	Rest of India - Rest of South Africa		
	2009-10	2010-11	Change
Jet Airways	0%	12%	12%
South African Airways	4%	4%	0%
Emirates	91%	80%	-11%
Qatar/Ethiad	3%	3%	0%
Kenyan/Ethiopian	2%	1%	-1%

Source: IATA Pax-IS

"Others" include Kenyan, Ethiopian and other carriers

The India-South Africa Market Size is 247,000 Passengers per Year

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Annexure 2

Market Shares Since Jet Airways commencement of Operations

Airline	Mumbai - Johannesburg											
	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Total
Jet Airways	57.0%	66.7%	73.5%	77.0%	76.4%	66.6%	56.3%	54.6%	44.8%	48.9%	50.8%	61.9%
South African Airways	19.8%	17.7%	17.2%	14.1%	13.9%	17.4%	23.7%	25.5%	22.7%	26.1%	27.7%	20.0%
Emirates	17.9%	10.2%	5.7%	4.6%	6.2%	11.4%	16.4%	16.4%	26.3%	19.3%	17.2%	13.4%
Others	5.3%	5.4%	3.6%	4.3%	3.5%	4.6%	3.6%	3.5%	6.2%	5.7%	4.3%	4.7%

Airline	Mumbai - South Africa (incl Johannesburg)											
	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Total
Jet Airways	48.8%	59.3%	66.9%	70.6%	68.7%	59.9%	53.2%	48.1%	39.9%	42.9%	46.5%	54.5%
South African Airways	24.8%	22.6%	21.0%	18.4%	16.9%	27.2%	25.4%	27.3%	28.3%	28.5%	29.4%	24.1%
Emirates	20.6%	12.1%	8.7%	7.0%	10.8%	14.0%	18.7%	20.6%	27.0%	24.1%	20.6%	17.0%
Others	5.8%	6.0%	3.4%	4.0%	3.6%	3.9%	2.7%	4.0%	4.8%	4.5%	3.5%	4.4%

Airline	Johannesburg - India (incl Mumbai)											
	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Total
Jet Airways	44.3%	54.6%	61.9%	62.7%	59.1%	48.7%	39.6%	38.9%	31.7%	35.6%	39.2%	47.1%
Emirates	33.6%	25.3%	18.9%	20.1%	26.1%	33.7%	40.9%	40.2%	48.0%	41.8%	36.9%	33.1%
South African Airways	15.7%	14.0%	13.7%	11.2%	10.6%	11.8%	15.2%	17.1%	14.4%	17.6%	19.6%	14.6%
Others	6.4%	6.1%	5.5%	6.0%	4.2%	5.8%	4.3%	3.8%	5.9%	5.0%	4.3%	5.2%

Key Footnotes
Source: IATA Pax-IS database

PSM

Annexure 3

PREVILEGED AND CONFIDENTIAL

Traffic Contribution of Various Markets to Jet Airways' Mumbai - Johannesburg - Mumbai Service
(April 2010 - February 2011)

Market	Total Traffic	%
Mumbai - Johannesburg and vice versa	31,021	47.3%
Mumbai - Rest of South Africa and vice versa	9,019	13.8%
Mumbai - Southern Africa and vice versa	1,968	3.0%
Mumbai - Africa and vice versa	250	0.4%
Johannesburg - Rest of India and vice versa	12,149	18.5%
Rest of India - Rest of South Africa and vice versa	4,669	7.1%
Rest of India - Southern Africa and vice versa	1,214	1.9%
Rest of India - Africa and vice versa	207	0.3%
Asia - All of Africa	4,191	6.4%
Others	860	1.3%
Grand Total	65,548	100%

Key Footnotes

Rest of South Africa excludes Johannesburg

Rest of India excludes Mumbai

Southern Africa includes Angola, Botswana, Namibia, Zimbabwe, Tanzania, Mozambique, Zambia

Pom

Annexure 4

PREVILEGED AND CONFIDENTIAL

April 2010 - February 2011 Financial Summary for Jet Airways Mumbai - Johannesburg - Mumbai Operation

	Apr '10	May '10	June '10	July '10	Aug '10	Sep '10	Oct '10	Nov '10	Dec '10	Jan '11	Feb '11	Apr 2010 - Feb 2011
Flight Statistics												
Number of Flights	32	60	60	58	52	54	50	40	44	46	40	536
Passengers	2,675	5,362	5,652	5,403	4,312	6,592	6,651	6,278	7,723	8,177	6,518	65,443
Seat Factor	38%	41%	43%	42%	38%	56%	60%	71%	80%	81%	74%	55%
Cargo (Kgs)	209,321	411,029	339,297	389,540	404,448	384,030	413,454	313,126	284,662	238,648	195,357	3,542,912
Financial Summary (\$M)												
Pax Revenue	1.05	2.20	2.47	2.64	1.74	2.46	2.47	2.33	3.32	3.61	2.43	26.72
Cargo Revenue	0.42	0.84	0.99	0.75	0.83	0.68	0.70	0.62	0.45	0.41	0.34	6.93
Total Gross Revenue	1.47	3.04	3.46	3.39	2.57	3.14	3.17	2.95	3.77	4.02	2.77	33.65
Less Commissions	0.12	0.16	0.25	0.24	0.19	0.25	0.25	0.26	0.34	0.41	0.32	2.78
Total Net Revenue	1.35	2.88	3.21	3.15	2.38	2.89	2.92	2.69	3.43	3.61	2.45	30.87
Operating Costs	2.37	4.41	4.42	4.21	3.69	4.25	3.67	3.11	3.50	3.75	3.43	40.81
Operating Profit/Loss	(1.02)	(1.53)	(1.21)	(1.06)	(1.31)	(1.36)	(0.75)	(0.42)	(0.07)	(0.14)	(0.98)	(9.85)
Ownership Interest Costs	0.65	1.11	1.15	1.08	0.99	1.08	1.00	0.74	0.77	0.84	0.74	10.14
Earnings Before Taxes	(1.67)	(2.64)	(2.36)	(2.14)	(2.30)	(2.44)	(1.75)	(1.16)	(0.84)	(0.98)	(1.72)	(19.99)
Additional Network Contribution to Other Flights in Jet Airways' Network												1.86

Key Footnotes

Jet Airways started the operations on April 14, 2010 with daily frequencies

Operations reduced to six weekly frequencies on August 3, 2010

Operations further reduced to five weekly frequencies on October 14, 2010

Rate of Exchange: \$1 = 46 INR

PBM

AFFIDAVIT & ANNEXURE

OF

**SANDRA JULIA HESTER
COETZEE**



**IN THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE
CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING
ORGANS OF STATE**

AFFIDAVIT

I, the undersigned,

SANDRA JULIE HESTER COETZEE

do hereby state under oath:

Introduction and Background

1. I prepared this affidavit at the request of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State ("the Commission") to assist the Commission in the discharge of its mandate. This affidavit is made to the best of my recollection of events during my tenure at SAA as may be relevant to the terms of reference of the Commission. My recollection of exact timelines and/or dates is limited.
2. I qualified with a BLC LLB in 1984 and was admitted as an Advocate of the High Court in 1985. Before joining SAA, I served the Department of Public Enterprises ("the DPE") in various capacities between 2005 and 2010, namely, Deputy Director-General: Legal, Governance and Risk, Chief Investment and Portfolio Manager and Acting Director-General. In 2010, I joined SAA in the capacity of General Manager: Legal, Risk and Compliance until my resignation in October 2012.

Shareholder Governance Approach

3. During my tenure at the DPE the governance approach was premised on accountability and compliance. To ensure that neither the Executive Authority (the Minister of Public Enterprises) nor the Accounting Authority (the Board of Directors) of State-Owned Enterprises ("SOEs") were compromised in the discharge of their respective oversight and fiduciary duties and responsibilities in terms of Chapters 6 and 7 of the Public Finance Management Act, Act 1 of 1999 ("the PFMA")

engagements between the Minister and the Board of Directors were structured around the prescribed corporate planning, performance measurement, reporting and required approvals framework of the PFMA.

4. In support of the Minister's duty to ensure compliance with the PFMA and the financial policies of the National Treasury, the DPE developed a portfolio-wide electronic risk-based performance dashboard that tracked financial, operational and governance performance of the SOEs with year-on-year and quarter-on-quarter comparisons. Discussions with SOEs in respect of corporate plans and quarterly performance reporting were followed up with direction in writing from the Minister. In most cases, the National Treasury was also invited to these discussions and the Minister of Finance would also require, in writing, particular matters to be addressed. In the case of SAA, monthly performance monitoring meetings were also introduced as a condition to guarantee support from the National Treasury. These discussions were robust and guiding whilst respecting the statutory prescribed accountability levels.
5. Where matters arose outside of the aforementioned governance framework as a consequence of National Government's objectives or through third-party submissions, these matters were referred, in writing, to the relevant Boards of Directors for consideration and report back.
6. With regard to board appointments, the DPE maintained a database of potential candidates for board positions with selection considerations including demographic and gender representation, demonstrable knowledge and experience in the areas where SOEs require strengthening in performance and the number of board positions already held. Prior to recommending candidates for board appointments, the relevant sector team and the legal, governance and risk team conducted an assessment of the skill set required to address the challenges faced by a particular SOE and compiled a list of potential board members along with their credentials for discussion and consideration by the Minister. After the evaluation by the DPE and the Minister a final list for recommendation to Cabinet was compiled. The same procedure was followed in the case of the 2009 appointment of the Board of Directors of SAA. This Board was demographically and gender representative and offered demonstrable expertise in the areas where SAA's performance required attention.
7. I am not aware of any changes in the governance approach of the Minister of Public Enterprises, Ms Barbara Hogan, towards SAA after my departure from DPE.



8. Over time, during my tenure at SAA, I became aware of events that may be considered a change in governance approach from the new Minister of Public Enterprises, Mr Gigaba. These events raised concern insofar as (a) the matters raised were, in the ordinary course of business, within the fiduciary duty of the Board of Directors and/or the duties of management, (b) proffered the interest of third parties and (c) occurred outside the governance framework as prescribed by the PFMA and were not reduced to writing. Where my advice on addressing these governance concerns were sought, I recommended that clarification and/or instruction be respectfully sought from the Minister in writing.

Relationship between Board of Directors and Management of SAA 2010-2012

9. The working relationship between the Board of Directors and management of SAA during the period 2010-2012 was structured around a new Delegation of Authority premised on transparency, accountability and integrity. There was a clear message to management that it will not be "business as usual". Costs had to be reduced and effectively controlled and a strategy for revenue growth had to be secured in a compliant manner.
10. Among others, the Delegation of Authority set value and materiality thresholds for procurement approvals. In addition, through the establishment of a Board Sub-Committee on procurement, special attention was paid to weaknesses and improvements in the maturity schedule of procurement practices. Areas of attention included a clear business rationale relevant to delivery on the corporate plan (including budget), compliance and value for money.

Procurement

11. Procurement requirements were initiated and defined by business units while bid submissions were evaluated by a cross-functional team representing various departments in the company. All procurement submissions had to, at a minimum, contain particulars of the procurement, evaluation results and a recommendation for approval where escalated in accordance with the DoA to the ultimate level of approval. Original bid documents were not included in the escalation process to protect the integrity of the evaluation process and confidentiality obligations towards bidders.



12. From the bottom to the top within the company, the hierarchy of procurement approvals were: the Chief Procurement Officer, the Bid Adjudication Committee, the Chief Executive Officer (CEO), the Procurement Sub-Committee of the Board and the Board of Directors.
13. In addition, in terms of to section 54(2) of the PFMA, SAA was required to seek approval from the Minister for significant and material transactions agreed to in advance between the Minister and the Board of Directors. Pursuant to section 54(2) relevant particulars of such procurement transactions were submitted to the National Treasury and the Minister for approval before any bid award of such transactions could be confirmed.

The Fleet Committee

14. A key area of concern within the airline was the lack of integrated fleet planning and management to support efficient commercial operations and meet safety requirements. The CEO, Ms Siza Mzimela, established a Fleet Committee comprised of senior executives representing Commercial, Flight Operations, Finance, Procurement, Cargo, Legal, Risk and Compliance and subsidiaries SAA Technical and Mango. The committee was chaired by the General Manager: Commercial.
15. Among others, the committee was charged with the determination of fleet requirements to implement the growth strategy contained in the corporate plan and the resolution of the long- standing legacy contracts for the purchase of twenty A320 aircraft. This gave rise to a Request for Proposals (RFP) for wide-body aircraft and negotiations to extricate SAA from the legacy A320 contract obligation in a manner that would terminate pre-delivery payments and claw back pre-delivery payments already made and enable access to contemporary aircraft options. Substantial progress was made in both these matters by the time that I left SAA.
16. The results of the RFP evaluation were presented to and approved by the Board of Directors and further presented to the DPE for consideration and approval by the Minister. I did not participate in the evaluation of the RFP bid submissions. Regarding the A320 contract, in principle agreement was reached to swop-out requirements for contemporary aircraft matching SAA's fleet requirements, the immediate sale and option for lease back on time-scales that would enable more frequent fleet renewal and the pay back of past pre-delivery payments.



The Mumbai Route

17. On occasion when Ms Mzimela was called to attend a meeting at the Minister's office, the purpose at the time not known to me, I was asked to take a call from a gentleman from Jet Airways who wanted to speak to the CEO. As the gentleman insisted speaking to Ms Mzimela, her assistant requested that I take the call as she was still at the Minister's office. I do not recall the gentleman's name. He indicated that he was leaving the Minister's office and would be on his way to SAA's offices to sign an agreement in respect of the Mumbai route. I indicated that I was not aware of such an agreement or a decision by the Board of Directors in that regard and would have to consult Ms Mzimela on the matter and revert. Ms Mzimela was tied up at the Minister's office for a while and the gentleman continued to call to arrange for the signature of the agreement on the same day. I called Ms Mzimela for guidance and was instructed to stall the matter as she had no knowledge thereof and was still waiting for the meeting with the Minister to commence. I then obtained the gentleman's email address and offered to revert to him in writing once I had received instruction.
18. Upon Ms Mzimela's return from the Minister's office, I briefed her about the call and she informed me of events at the Minister's office. I addressed an email to the gentleman with copy to the General Manager: Commercial requesting that he sends us further particulars of their proposal and a copy of the agreement and indicated that the matter had been referred to the General Manager: Commercial as the appropriate executive to address the matter. In reply, I did not receive further particulars of the agreement or the agreement itself but rather concern about not proceeding with the signing of the agreement. Thereafter, I did not have any further involvement with the matter.

The New Age Procurement

19. During my tenure at SAA, I served as the Chairperson of the BAC, for a term after which I recommended that, due to other pressing matters, I be replaced by one of the lawyers in the legal unit. One of the matters presented to the BAC was the approval of a confined procurement of the New Age daily newspaper. The meeting of the BAC was on 22 February 2011. Various considerations were raised during the debate at the BAC among which were cost and justification for the procurement within the context of a cost containment commitment, implications for flight operations and compliance with BAC submission requirements. The BAC did not approve the procurement but referred the matter back to the cross-functional team to address the concerns raised by the BAC before a final

decision could be taken. To my knowledge, not all concerns raised by the BAC were addressed but a cost per unit reduction in price for a limited test period was secured. I did not sign the submission to approve the procurement as not all the BAC concerns were addressed.

20. I received some documents relating to this matter on 29 November 2018. Except for the meeting on 22 February 2011, I was not involved in any of the discussions or meetings after that date. The attached document " HEADING: REQUEST TO CONFINE TO NEW AGE NEWSPAPER" was presented to the BAC meeting but not approved. I did not sign it. **(Annex A)**
21. I also attach an extract from the minutes of the meeting of the BAC held on 22 February 2011. This document incorrectly states that the BAC recommended the procurement and distribution of the New Age newspaper. The BAC did not take such a resolution. This is corroborated by the attached BAC submission checklist. As appears from this document, many of the key submission compliance were not done. **(Annex B)**

Mr Siyabonga Mahlangu

22. I only met Mr Siyabonga Mahlangu ("Siya") once in a meeting called by the DPE of all legal departments of the SOEs reporting to the Minister of Public Enterprises and hosted at Eskom. The purpose of the meeting was not known in advance but at the start of the meeting it transpired that the meeting was a follow up of an earlier meeting hosted at the DPE where Mr Mahlangu was not present and where the subject matter was the procurement of legal firms to address transformation objectives.
23. To put what transpired in the meeting where Mr Mahlangu was present in perspective, the circumstances of the earlier meeting is relevant. The earlier meeting was called by the DPE and chaired by a chief director in the legal department, Mr Sandile Dlamini. The meeting was attended by representatives from most of the SOEs. We were advised that the DPE was concerned about demographic representation in the legal firms appointed by the SOEs and wanted a uniform approach to achieving greater representation. Without exception all present expressed support for the transformation objectives that the DPE wanted to achieve as well as for a collaboration between the SOEs to share information towards a harmonised approach. In this regard, the representative of Denel and myself reported that our companies had recently appointed a new panel of legal firms following our respective procurement processes and that included preferential weighting for Broad-Based Black Economic Empowerment (BBBEE) scoring as well as for meaningful formal partnerships with wholly owned black legal firms. It was recommended that

these processes be shared with all to determine where our respective procurement can be improved. During the course of discussions certain complexities and compliance considerations were also raised. This included the requirement that procurement processes must follow individual company governance procedures and must be compliant with the PFMA and the Preferential Procurement Policy Framework Act, Act 5 of 2000. Furthermore, it was highlighted that some transactions are complex and most of the experienced skills are housed in bigger firms with BBBEE accredited ratings. During the discussions, Mr Dlamini indicated that he was concerned as he had to report back to Siya and the latter wanted immediate action and thus where required skills are not available in smaller black firms consideration should be given to allowing the smaller black firms to sub-contract the expertise of the larger predominantly established white firms. At that time, concerns were raised regarding compliance with procurement laws and it was recommended that, in addition to the sharing of information by SOEs, the DPE provides its proposal on how to implement its objectives for consideration by the governance structures of the respective SOEs. It was also recommended that the DPE obtain a legal opinion to guide compliance in this regard. Subsequent to the meeting SOEs, including SAA, shared information but no further feedback or correspondence in this regard came from the DPE, other than the follow up meeting where Mr Mahlangu was present.

24. The follow up meeting was chaired by Ms Matsietsi Mokholo, the then Deputy Director-General, Legal, Governance and Risk. The meeting was attended by representatives of all the SOEs. Ms Mokholo called for a collaborative approach to enhancing BBBEE representation through the procurement of legal services by the respective SOEs. In this regard, representatives in attendance again pledged support and highlighted the considerations raised at the earlier meeting. Mr Mahlangu, sitting next to Ms Mokholo, seemingly got frustrated with how the meeting was proceeding and then abruptly pushed Ms Mokholo aside and took over control of the meeting. In an aggressive tone he informed the meeting that he wants to see action and if SOEs did not cooperate that they will be dealt with. He also proceeded to single SAA out as not being cooperative. The meeting was in shock and colleagues from the DPE tried to calm down Mr Mahlangu. The meeting closed abruptly.
25. I briefed Ms Mzimela on the outcome of both events.



Appointment of New Board of Directors, 2012

26. Upon the appointment of a new Board of Directors (chaired by Mr Vuyisile Kona) in 2012, management continued with their commitment to diligently serve the Board of Directors and the company. As far as I am aware, none had contemplated leaving the airline and the CEO called on all to continue with our support, commitment and duties as usual. However, within days after the appointment of the new Board of Directors, the Chairperson announced that he will be serving as Executive Chairperson and took office at the company. This announcement caught us all by surprise and confused us regarding reporting lines as the CEO, Ms Mzimela, had not vacated her position. During this period, Mr Kona also called executives directly to his office for meetings without informing, inviting or consulting Ms Mzimela. As far as I am aware all executives complied with Mr Kona's instructions.
27. During this period, Mr Kona came to my office and instructed that I hand over all documents related to (a) the review of existing contracts for purposes of termination or re-negotiation as part of the cost reduction initiatives, and (b) the fleet transactions. I undertook to do so but requested an opportunity to brief Mr Kona on the outcome of the contract review and the A320 legacy contract negotiations. He did not show an interest in such a briefing and indicated that he will personally be handling these matters going forward and he was already engaging with people in that regard.
28. After this incident, I was called to Mr Kona's office for a meeting. Mr Kona indicated that he considered it important to explain his approach to business which is one of honouring favours among friends. He continued to illustrate this approach with an example within his own experience where he requested a previous employer (I cannot recall the name of the company but it operates within the electronic equipment sector) to supply him with a television. I was surprised by the content of the meeting as I anticipated that it may be the opportunity to brief Mr Kona on the matters we discussed earlier, thus I did not respond to Mr Kona's brief on doing business. Mr Kona enquired whether I had any comment and understood what he was saying. I indicated that I understood but had no comment upon which Mr Kona indicated that he will have me investigated if I did not cooperate. I replied that I have and will continue to serve SAA to the best of my ability and that I am not aware of any matter that would warrant any investigation but in such an event I will collaborate with any investigation. I then left the meeting.



29. Upon return to my office, I was perplexed at the turn of events and called the CEO for guidance on how to proceed. Ms Mzimela advised me that she was equally confused and perplexed by events and that she had written to Mr Kona to seek clarification from him and the Minister but had yet not received a response. I spent the rest of the day considering the implications of events during the past year, and, in particular, the past few days, and concluded that there was indeed a new governance approach which would potentially compromise the ability of SAA to become sustainable and further potentially compromise my role and integrity as a prescribed officer of the company. I decided to tender my resignation. I did not discuss this decision with Ms Mzimela.
30. The next day Ms Mzimela called a meeting of the executive management and informed us that she has written to Mr Kona and received no response and consequently she has tendered her resignation. I indicated that I will be doing the same. I proceeded to finalise my resignation letter and submitted such to the General Manager: Human Resources, Ms Thuli Mpshe, indicating that I am willing to vacate my position earlier than the one-month notice period if that is required by the CEO or Executive Chairman and the Board of Directors. The General Manager: Human Resources indicated that she would revert to me and indicated that I must be on standby for a possible meeting with Mr Kona. I proceeded to call the heads of the divisions reporting to me and briefed them on my resignation and for purposes of an orderly hand-over, I shared with them the status of and next steps of all matters current on my desk. We agreed that all documents would remain in my office and they were briefed on the registry of such documents.
31. By the next day, I had not received any response to my letter of resignation nor was I called to a meeting with Mr Kona. Prior to leaving the office that day I enquired with the General Manager: Human Resources whether I would still be called by Mr Kona on that day and she undertook to revert to me. On my way home, I received two calls. The one was from the General Manager: Human Resources informing me that my resignation had been accepted with immediate effect and that I am not required to return the next day. The other was from the Acting Chief Procurement Officer, Mr Alvin Chetty, who wanted my advice on an instruction from Mr Kona to provide him with a number of copies of the bid documents of bidders responding to the RFP for new fleet procurement. His concern was borne out of the fact that the procurement process was not yet completed and submissions were subject to strict confidentiality obligations. I advised him that I am no longer in the employment of SAA and, he must ensure that the procurement process is not compromised. To this end, I advised that he may consider advising Mr Kona of these concerns and should he provide



copies of the documents he had to ensure that recipients sign for the documents.

32. After these events, I did not engage further with the Board of Directors or the management of SAA regarding the operations of the airline. My departure from SAA was followed by a period of financial and emotional distress for my family as I have always been the principal provider. Although I could secure short-term assignments, I only secure fixed-term employment in 2014.
33. Other than the documents referred to in paragraphs 19 and 20, I have no records of SAA in my possession. The Corporate Plan and Quarterly Report submissions and correspondence between SAA and the Minister as well as related submissions to the Board of Directors may provide further insight into the aforementioned events.


DEPONENT

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me, Commissioner of Oaths, at Centurion on this the 25th day of June 2019. 2019 the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.


COMMISSIONER OF OATHS

FULL NAMES:

ADDRESS:

EX OFFICIO:

Kim Alan McEwen CA (SA)
Commissioner of Oaths
16 Mount Columbia
Midlands Estate
Centurion

- Corporate Affairs
- GSM and Finance

PFMA IMPLICATION

In order to comply with the PFMA, the CFST recommend that the BAC approve the submission for the confinement of New Age Newspaper.

APPROVAL PROCESS

BAC

RECOMMENDATION

It is recommended that the BAC grant permission to purchase and distribute the New Age Newspaper at check-in counters at OR Tambo, King Shaka and Cape Town International airports for a period of 2 months starting 1st April 2011.

SIGNATURES:**1. Compiled by:**

Ntombi Nzeocha
Ntombi Nzeocha- Commodity Manager

14.02.2011

Date

2. Requested by:

Thabani Mkhize
Thabani Mkhize
Manager- Sponsorship

15/02/2011

Date

3. Supported by:

Armstrong Ngcobo
Armstrong Ngcobo
Chief Procurement Officer

16/02/2011

Date

Fani Zulu
Fani Zulu
Head- Cooperate Affairs

15/02/2011

Date

4. Confirmation of budget or corrective measure to ensure no overspend:

Stuart Laird-Smith
Stuart Laird-Smith
Financial Controller - Commercial

16 Feb 11.

Date

5. Approved/not approved by BAC

Sandra Coetzee
Sandra Coetzee
BAC- Chairman

Date

A. J.



SOUTH AFRICAN AIRWAYS

South African Airways
BAC Secretariat Office
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Kempton Park, 1627
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EXTRACT FROM THE MINUTES OF THE MEETING OF THE BID ADJUDICATION COUNCIL (22022011) SOUTH AFRICAN AIRWAYS (PTY) LTD HELD 22 FEBRUARY 2011, AT AIRWAYS PARK AT 10:30

6.1 Request to Confine to New Age Newspaper

Adjudicated by BAC: 22 February 2011

It was **RESOLVED THAT** the procurement and distribution of the New Age Newspaper at check-in counters at the OR Tambo Int. Airport, King Shaka Int. Airport and Cape Town Int. Airport for a period of 2 (two) months commencing 01 April 2011, be and is hereby supported and recommended for approval through the Delegation of Authority subject to negotiation of a 10 (ten) percent discount and if not obtained, the submission should be re-tabled at the BAC.

True excerpt of the Minutes



Disclaimer: For Internal Purposes Only

Directors

CA Carolus* (Chairperson), SP Mzimela (Chief Executive), T Daka*, TC Jantjies*, Y Kwinana*, DH Lewis*, RM Loubser*, BF Mohale*, DC Myeni*, JP Ndhlovu*, LG Nkosi-Thomas*, LJ Rabbets*, ZJ Sithole*, M Whitehouse*

*Non Executive


Ruth Kibuuka Company Secretary

South African Airways (Proprietary) Limited Reg. No. 1997/022444/07

A STAR ALLIANCE MEMBER

6.1

A.2.

Tender #:		Tender Name/ Description: REQUEST TO QUOTE TO NEW KIE NEWSPAPER		 SOUTH AFRICAN AIRWAYS A STAR ALLIANCE MEMBER	
Commodity Manager:		NTOMBI NZEOCHA			
Tender Start Date:					
Tender End Date:					
Value of Contract:		SPONSORSHIP			
Business Unit:		BAC submission checklist			
	Key evidence of submission compliance:		Complete: Yes () / No ()	Evidence attached: Yes () / No ()	Comments (incl. if no evidence is provided)
A1	Purpose - a clear description of the purpose of the submission to the BAC and the approvals required		<input checked="" type="checkbox"/>	<input type="checkbox"/>	
A2	Summary of the Business case/evidence of demand for the goods procured (the detailed Business case as approved by the Business unit and approved in line with the Delegation of Authority to be attached as an Annexure)		<input type="checkbox"/>	<input type="checkbox"/>	
A3	Details of the tender, number of bidders and acceptance of bids based on the critical criteria. (Tender documentation to be attached as an Annexure)		<input type="checkbox"/>	<input type="checkbox"/>	
A4	Bid evaluation - evaluation criteria, evaluation outcomes and process followed, including due diligence conducted on the potential suppliers (detailed evaluation sheets to be attached as Annexures)		<input type="checkbox"/>	<input type="checkbox"/>	
A5	Financial due diligence		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
A6	Bid award recommendation		<input type="checkbox"/>	<input type="checkbox"/>	
A7	Financial impact assessment		<input type="checkbox"/>	<input type="checkbox"/>	
A8	Assessment of fair value		<input type="checkbox"/>	<input type="checkbox"/>	
A9	Risk assessment		<input type="checkbox"/>	<input type="checkbox"/>	
A10	Contracting terms and conditions		<input type="checkbox"/>	<input type="checkbox"/>	
A11	Final recommendation		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
A12	All required signatures received		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	

Comments:

This checklist must not be seen by business and procurement as the only document they need to consider to the exclusion of the actual Supply Chain Manual, the DOA, PFMA and applicable policies and legislation etc.
All tenders that involve IPP considerations must make specific reference to this in the financial considerations of the tender.

I certify that the SAA BAC submission requirements has been met

Commodity Manager	Head of Department - Business Unit
<i>Mkhosi</i>	<i>SIGNED</i>
Strategic sourcing manager	Financial controller - Business unit
	<i>SIGNED</i>
Head Global Supply Chain	General manager - Business unit.