

CORPORATE & COMMERCIAL ALERT

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CLIFFE DEKKER HOFMEYR

INCORPORATING
KIETI LAW LLP, KENYA

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Taking flight: Recent amendments to the Civil Aviation Act

On 6 April 2022, President Cyril Ramaphosa assented to the Civil Aviation Amendment Act 22 of 2021 (Amendment Act). Once its commencement date is proclaimed, the Amendment Act will amend and expand on the provisions of the Civil Aviation Act 13 of 2009 (Civil Aviation Act) in relation to issues of aviation safety and security, enhanced environmental protection and regulatory compliance (amongst other things).



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Taking flight: Recent amendments to the Civil Aviation Act

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The Amendment Act has been in the pipeline since November 2018. After lapsing before Parliament in 2018, the Civil Aviation Amendment Bill was revived towards the end of 2019 and gained traction in 2020 as the civil aviation industry focused on recovering from the devastating impact of the COVID-19 pandemic.

South Africa holds a remarkable record in aviation safety and security, with no fatal accidents in commercial scheduled operations in more than 30 years. However, given the rise in aircraft accidents globally, and in order to maintain a positive record of aviation safety, it is imperative that South Africa's regulations are constantly improving.

Chapter 4 of the Civil Aviation Act made provision for the establishment of the Aviation Safety Investigation Board (Board) which is vested with the authority to investigate aircraft accidents and incidents occurring in South Africa. In practice it became evident that certain provisions of

Chapter 4, particularly those dealing with the structure of the Board as well as the conflict of interest of members, posed a hindrance to the appointment of members and general functioning of the Board. To address this, the provisions of Chapter 4 have been substituted in their entirety and the Amendment Act replaces the Chairperson's discretion and power to appoint and manage staff with a process that requires public participation and input from various aviation experts, the Minister of Transport and Parliament. The Amendment Act will also afford aviation participants the opportunity to appeal findings of Board in relation to an accident.

Among the many challenges facing the aviation industry are the rapidly changing global weather patterns, as well as the need for a regulatory framework that promotes adequate environmental protection. The Amendment Act seeks to expand the jurisdiction of the South African Civil Aviation Authority (SACAA) to include

a robust environmental protection oversight function. The South African aviation industry can expect to see an increase in regulations aimed at improving environmental protection to strategically align South African policy with global standards.

It is important to note that the Amendment Act will place a positive obligation on aviation participants, and particularly carriers, to "develop and implement" an aviation security programme, while the Civil Aviation Act simply requires participants to "have" an aviation security programme. We expect to see increased monitoring by the SACAA of carriers' aviation security programmes, which will need to be developed in line with evolving aviation practices and safety and security standards. We may even see aspects of environmental protection brought under the scope of the National Aviation Security Programme in due course.

Taking flight: Recent amendments to the Civil Aviation Act

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An important factor in maintaining aviation safety and security stems from successfully monitoring and addressing areas of non-compliance through aviation regulations. There is a strong correlation between regulatory non-compliance and an increase in safety risks. Notably, the Amendment Act will delete the provisions of the Civil Aviation Act dealing with compliance notices. In the event that the SACAA identifies regulatory non-compliance, the Commissioner for Civil Aviation will be entitled to apply to court to have the persons responsible convicted of an offence, and they could be liable on conviction to a fine not exceeding R50,000, or imprisonment not exceeding 10 years, or both.

Aviation participants are encouraged to take cognisance of the changes to come following the proclamation of the effective date of the Amendment Act, as we expect to see heightened monitoring by the SACAA in strategic areas and a possible rise in legal action against non-compliant participants given the redundancy of compliance notices, going forward.

**VIVIEN CHAPLIN,
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KEENAN STEVENS**

2022 RESULTS

CHAMBERS GLOBAL 2021 - 2022

ranked our Corporate & Commercial practice in Band 1: corporate M&A and in Band 2 capital markets: Debt and capital markets: equity.

Ian Hayes ranked by **CHAMBERS GLOBAL 2022** in Band 1: corporate M&A.

David Pinnock ranked by **CHAMBERS GLOBAL 2022** in Band 1: corporate M&A: private equity.

Johan Latsky ranked by **CHAMBERS GLOBAL 2022** as a Senior Statesperson for capital markets: equity.

Peter Hesseling ranked by **CHAMBERS GLOBAL 2022** in Band 2: corporate M&A.

Willem Jacobs ranked by **CHAMBERS GLOBAL 2022** in Band 2: corporate/M&A and in Band 3: corporate/M&A: Private equity.

Sammy Ndolo ranked by **CHAMBERS GLOBAL 2022** in Band 4: corporate/M&A, Kenya.

David Thompson ranked by **CHAMBERS GLOBAL 2022** in Band 4: corporate/M&A.



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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

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