REPUBLIC OF SOUTH AFRICA

# SOUTH AFRICAN AIRWAYS UNALLOCATABLE DEBT BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Government Gazette No. 20800 of 7 January 2000) (The English text is the official text of the Bill)*

**(MINISTER OF FINANCE)**

[**B** 1—2000]

REPUBLIEK VAN SUID-AFRIKA

# WETSONTWERP OP ONTOEWYSBARE SKULD VAN DIE SUID-AFRIKAANSE LUGDIENS

*(Soos ingedien in die Nasionale Vergadering as 'n artikel 75-wetsontwerp; verduidelikende opsomming van Wetsontwerp in Staatskoerant No. 20800 van 7 Januarie 2000 gepubliseer) (Die Afrikaans teks is die amptelike vertaling van die Wetsontwerp)*

(MINISTER VAN FINANSIES)

**[W 1—2000]**

ISBN O 621291331

No. of copies printed ........................................ 2 600

# BILL

**To authorise the Minister of Finance to borrow a certain amount of money during the financial year ending on 31 March 2000, for the purposes of discharging a portion of the debt of the Transnet Group of Companies attributable to South African Airways at its incorporation; and to provide for matters in connection therewith.**

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

Definitions

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

(i) "burden-sharing arrangement'' means the arrangement between the Government and Transnet whereby the Government assumes a portion of the unallocatable debt at incorporation of South African Airways; (iii)

(ii) "Minister" means the Minister of Finance; (i)

(iii) ''Transnet'' means the company refereed to in section 2 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989); (iv) and

(iv) ''unallocatable debt" means the portion of the total debt attributable to South African Airways which had not been allocated to South African Airways' balance sheet as at 1 April 1999. (ii)

Authorisation of Minister to borrow certain amount **of money**

2.( 1) Despite the provisions of any other law, the Minister may borrow an amount of R 1333000000 plus such amount as may be necessary to cover the costs of servicing the debt, during the financial year ending on 31 March 2000, for the purposes of discharging the Government's assumed liability in terms of the burden-sharing arrangement.

(2) *(a)* From the money so borrowed, the Minister must transfer to Transnet a sum of money—

(i) sufficient to discharge the portion of the unallocatable debt which was assumed by the Government; and

(ii) equal to the total costs of servicing the debt mentioned in subparagraph (i) as incurred by Transnet, which costs must be calculated with effect from 1 April 1999.

*(b)* A transfer in terms of paragraph *(a)* must be made on such terns and conditions as the Minister may determine.

(3) The money so transferred must be used for the purposes referred to in subsection (2)(a)(i) and (ii) and for no other purpose.

**Short title**

**3.** This Act is called the South African Airways Unallocatable Debt Act, 2000.

# MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN AIRWAYS UNALLOCATABLE DEBT BILL, 2000

## Background

On 30 April 1999 the Inter-Ministerial Cabinet Committee responsible for the restructuring of State assets ("IMCC") agreed that there should be a burden-sharing arrangement between the Government and Transnet. The burden-sharing arrangement entails that the Department of Finance will negotiate the debt allocation to each Transnet subsidiary in the process of privatisation and the utilisation of the proceeds from privatisation.

Prior to the sale of SAA, the Government's Advisor on Restructuring ("HSBC") and Transnet estimated that the gross debt of Transnet which is attributable to SAA amounts to R4,057 billion. It was agreed that R 1 billion of this debt was to be allocated to SAA's balance sheet with effect from 1 April 1999 (date of incorporation). R3,057 billion was deemed to be unallocatable debt. The IMCC decided that Transnet would be responsible for R 1,724 billion of this unallocatable debt. The Government will then take over R 1,333 billion of the unallocatable debt plus such amount as may be necessary to cover the costs of servicing the debt.

A liquid (tradeable) instrument to the value of R 1,333 billion plus interest payable semi-annually until maturity will be used to effect this transaction.

An equity stake of 20% of SAA was sold to Swissair for R 1,4 billion, Government will receive R610 467778 as part of the burden-sharing arrangement, which will on receipt be paid into the National Revenue Fund.

## Objects of Bill

Section 213(2) of the Constitution prescribes that money may only be withdrawn from the National Revenue Fund in terms of an appropriation by an Act of Parliament or as a direct charge, when it is provided for by an Act of Parliament. As the R 1,333 billion debt, which Government agreed in terms of the decision by the IMCC to be responsible for, was not budgeted for in the 1999/2000 budget, since the IMCC decision was taken after the conclusion of that budget, legislation has to be tabled to allow Government to borrow the money and approve payment and transfer thereof to the Transnet Group of Companies for the purpose of discharging the debt.

## Consultation

The Office for Public Enterprises and the Transnet Group of Companies were consulted regarding the Bill.

## Parliamentary procedure

The Department and the State Law Advisers are of the opinion that the Bill must be dealt with in accordance with section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

## Financial implications for State

As discussed above. Having regard to the reforms introduced by the South African Revenue Service and the proceeds from the sale of state-owned assets, Government borrowing has declined to an extent that it will be possible to accommodate the interest cost on the R1,333 billion, within the 1999/2000 Budget for debt-servicing costs.