

COURT ONLINE COVER PAGE

IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Division, Pretoria

CASE NO: 2022-018947

In the matter between:

**CLOETE MURRAY NO ,KGASHANE
CHRISTOPHER MONYELA NO ,AHMED
CARIM NO ,TRACY ANNE CAMERON
NO ,BUHLE JEFFREY ERIC BUTHELEZI
NO**

Plaintiff / Applicant / Appellant

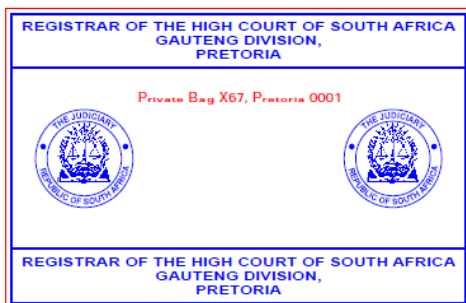
and

**MUSA NSIBANDE NO ,RAESIBE
KEKANA NO ,LEANDAMARSHA
MTSHALI NO ,RICKIE RENNIE NO
,EMMANUEL MBUWE NO ,PATRICIA
MANTSINA NO ,ANDRIES NTJANE NO
,THE AIR SERVICES LICENSING
COUNCIL**

Defendant / Respondent

Notice of Motion (Long Form)

NOTE: This document was filed electronically by the Registrar on 26/8/2022 at 3:02:28 PM South African Standard Time (SAST). The time and date the document was filed by the party is indicated on the header of each page of this document.



ELECTRONICALLY SIGNED BY:

**Registrar of High Court of South
Africa , Gauteng Division,Pretoria**

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO:

In the matter between:

CLOETE MURRAY N.O.

First Applicant

KGASHANE CHRISTOPHER MONYELA N.O.

Second Applicant

AHMED CARIM N.O.

Third Applicant



TRACY ANNE CAMERON N.O.

Fourth Applicant

BUHLE JEFFREY ERIC BUTHELEZI N.O.

Fifth Applicant

*[In their capacities as the Joint Provisional Liquidators
of Comair Limited (In Provisional Liquidation)]*

and

MR MUSA NSIBANDE N.O.

First Respondent

RAESIBE KEKANA N.O.

Second Respondent

LEANDA-MARSHA MTSHALI N.O.

Third Respondent

RICKIE RENNIE N.O.

Fourth Respondent

EMMANUEL MBUWE N.O.

Fifth Respondent

PATRICIA MANTSINA N.O.

Sixth Respondent

ANDRIES NTJANE N.O.

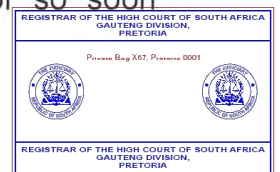
Seventh Respondent

THE AIR SERVICES LICENSING COUNCIL

Eighth Respondent

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE THAT the applicants will apply to the above Honourable Court on **TUESDAY, 13 SEPTEMBER 2022 at 10h00** or so soon thereafter as counsel may be heard for an order in the following terms -



- 1 dispensing with the requirements of the Rules of Court relating to service and time periods and disposing of the application as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court;
- 2 in terms of s.25(2)(a) of the Air Services Licensing Act 115 of 1990, setting aside the decision of the Air Licensing Services Council ('the Council'), to suspend the licences, licence numbers: **NO67D** and **SO66D** of Comair Limited (in provisional liquidation) ("Comair"), as communicated by the Council to Comair in its letter to Comair dated 3 August 2022 on the basis that the decision is unlawful, irregular and/or impermissible ;
- 3 that the respondents pay the costs of this application, jointly and severally; and
- 4 further and/or alternative relief.

BE PLEASED TO TAKE NOTICE FURTHER THAT the affidavit of **CLOETE MURRAY** and annexures thereto will be used in support of this application and that the applicants have appointed the address of **Werksmans Attorneys**, Tel 011 535 8000, Reference: Mrs L Silberman/le/SECH37698.24, Email: lsilberman@werksmans.com c/o **DDP Attorneys Inc.**, Menlyn Woods Office Park, First Floor Block A, 291 Sprite Avenue, Faerie Glen, Pretoria as the address at which the applicants will accept service of all and/or any process herein.

BE PLEASED TO TAKE NOTICE FURTHER THAT should the respondents intend opposing this application the respondents are required to –



1. notify the applicants' attorney in writing of your intention to do so by 16:00 on Tuesday, 30 August 2022;
2. appoint in such notification an address referred to in Rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings;
3. deliver your answering affidavit, if any, by 14:00 on Friday, 2 September 2022.

DATED at JOHANNESBURG on this the 26th day of AUGUST 2022.

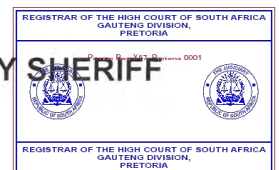
WERKSMANS ATTORNEYS
Attorneys for the applicants
The Central, 96 Rivonia Road
Sandton, Johannesburg
Tel: 011 535 8000
Ref: Ms L Silberman/SECH37698.24
Email: lsilberman@werksmans.com

c/o DDP Attorneys Inc.
Menlyn Woods Office Park
First Floor Block A
291 Sprite Avenue
Faerie Glen
Pretoria
Tel: +27 87 980 5385
Email: danielle@ddp.co.za

TO:
**THE REGISTRAR OF THE ABOVE HONOURABLE COURT
GAUTENG DIVISION, PRETORIA**

AND TO:
MR MUSA NSIBANDE N.O.
First Respondent
c/o The Air Licensing Services Council
Forum Building
Corner Struben and Bosman Streets
Pretoria

SERVICE BY SHERIFF



AND TO:
RAESIBE KEKANA N.O.
Second Respondent
c/o The Air Licensing Services Council
Forum Building
Corner Struben and Bosman Streets
Pretoria

SERVICE BY SHERIFF

AND TO:
LEANDA-MARSHA MTSHALI N.O.
Third Respondent
c/o The Air Licensing Services Council
Forum Building
Corner Struben and Bosman Streets
Pretoria

SERVICE BY SHERIFF

AND TO:
RICKIE RENNIE N.O.
Fourth Respondent
c/o The Air Licensing Services Council
Forum Building
Corner Struben and Bosman Streets
Pretoria

SERVICE BY SHERIFF

AND TO:
EMMANUEL MBUWE N.O.
Fifth Respondent
c/o The Air Licensing Services Council
Forum Building
Corner Struben and Bosman Streets
Pretoria

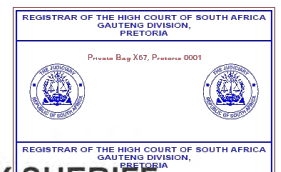
SERVICE BY SHERIFF

AND TO:
PATRICIA MANTSINA N.O.
Sixth Respondent
c/o The Air Licensing Services Council
Forum Building
Corner Struben and Bosman Streets
Pretoria

SERVICE BY SHERIFF

AND TO:
ANDRIES NTJANE N.O.
Seventh Respondent
c/o The Air Licensing Services Council
Forum Building
Corner Struben and Bosman Streets
Pretoria

SERVICE BY SHERIFF



AND TO:
THE AIR SERVICES LICENSING COUNCIL
Eighth Respondent
c/o The Air Licensing Services Council
Forum Building
Corner Struben and Bosman Streets
Pretoria

SERVICE BY SHERIFF

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IN THE HIGH COURT OF SOUTH AFRICA
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CASE NO: **2022-018947**

In the matter between:

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NO ,BUHLE JEFFREY ERIC BUTHELEZI
NO**

Plaintiff / Applicant / Appellant

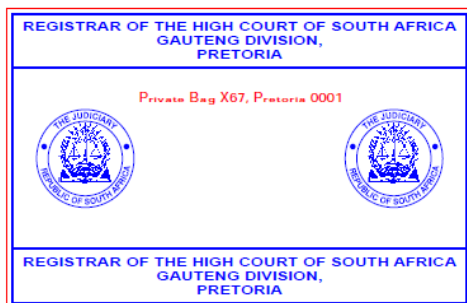
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**MUSA NSIBANDE NO ,RAESIBE
KEKANA NO ,LEANDAMARSHA
MTSHALI NO ,RICKIE RENNIE NO
,EMMANUEL MBUWE NO ,PATRICIA
MANTSINA NO ,ANDRIES NTJANE NO
,THE AIR SERVICES LICENSING
COUNCIL**

Defendant / Respondent

Founding Affidavit

NOTE: This document was filed electronically by the Registrar on 26/8/2022 at 4:40:31 PM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.



ELECTRONICALLY SIGNED BY:

**Registrar of High Court of South
Africa , Gauteng Division,Pretoria**

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO:

In the matter between:

CLOETE MURRAY N.O.

First Applicant

KGASHANE CHRISTOPHER MONYELA N.O.

Second Applicant

AHMED CARIM N.O.

Third Applicant



TRACY ANNE CAMERON N.O.

Fourth Applicant

BUHLE JEFFREY ERIC BUTHELEZI N.O.

Fifth Applicant

*[In their capacities as the Joint Provisional Liquidators
of Comair Limited (In Provisional Liquidation)]*

and

MR MUSA NSIBANDE N.O.

First Respondent

RAESIBE KEKANA N.O.

Second Respondent

LEANDA-MARSHA MTSHALI N.O.

Third Respondent

RICKIE RENNIE N.O.

Fourth Respondent

EMMANUEL MBUWE N.O.

Fifth Respondent

PATRICIA MANTSINA N.O.

Sixth Respondent

M
le

ANDRIES NTJANE N.O.

Seventh Respondent

THE AIR SERVICES LICENSING COUNCIL

Eighth Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

CLOETE MURRAY



do hereby make oath and say -

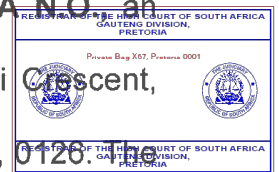
- 1 I am an insolvency practitioner of Sechaba Trust (Pty) Ltd at Unit G03, Lady Brooks Office Park, Corner of Brooklyn and Justice Mahomed Streets, Menlo Park, Pretoria.
- 2 The facts contained herein are, unless otherwise indicated, within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
- 3 I am the first applicant in this application and I am one of the joint provisional liquidators of Comair Limited (in Provisional Liquidation) ("**Comair**"). I will hereinafter refer to the insolvent estate of Comair as "**Comair**".

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- 4 I attached marked "FA1" the certificate of appointment of the applicants and I further attach as annexure "FA2" an order of the High Court of South Africa, Gauteng Division, Johannesburg ("the Court") in terms of which the applicants and I are authorised to institute this application.

THE PARTIES

- 5 The second applicant is **KGASHANE CHRISTOPHER MONYELA N.O.** an insolvency practitioner of Masiye Administrators CC at 103 Liburi Crescent, Savanna Country Estate, Mamelodi and PO Box 11460, Tramshed, 0120. The second applicant is my joint provisional liquidator of Comair and is cited herein as such. The second applicant supports this application as is evident from his confirmatory affidavit attached hereto as "FA3".

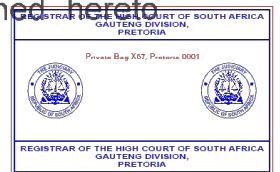


- 6 The third applicant is **AHMED CARIM N.O.** an insolvency practitioner of MFO Carim Family Inv (Pty) Ltd at Fehrsen Street, Brooklyn, Pretoria and PO Box 19565, Pretoria West, 0017. The third applicant is my joint provisional liquidator of Comair and is cited herein as such. The third applicant supports this application as is evident from his confirmatory affidavit attached hereto as "FA4".
- 7 The fourth applicant is **TRACY ANNE CAMERON N.O.** an insolvency practitioner of Stowell Estate Administration Trust at 295 Pietermaritzburg Street, Pietermaritzburg and PO Box 33, Pietermaritzburg, 3200. The fourth applicant is my joint provisional liquidator of Comair and is cited herein as such.

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The fourth applicant supports this application as is evident from her confirmatory affidavit attached hereto as "**FA5**".

- 8 The fifth applicant is **BUHLE JEFFREY ERIC BUTHELEZI N.O.** an insolvency practitioner of Buthelezi Attorneys at 19 Teebos Avenue, Palm Ridge and PO Box 136602, Alberton North, 1456. The fifth applicant is my joint provisional liquidator of Comair and is cited herein as such. The fifth applicant supports this application as is evident from his confirmatory affidavit attached hereto as "**FA6**".



- 9 The first to fifth applicants are collectively hereinafter referred to as "**the applicants**".

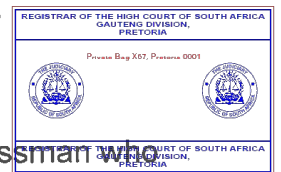
- 10 The first respondent is **MR MUSA NSIBANDE N.O.**, an adult businessman who is cited in his capacity as the Chairperson of The Air Services Licensing Council ("**the Council**") which conducts business from The Forum Building, Corner Struben and Bosman Streets, Pretoria.

- 11 The second respondent is **RAESIBE KEKANA N.O.**, an adult businessman who is cited in his capacity as the Vice Chairperson of the Council which conducts business from The Forum Building, Corner Struben and Bosman Streets, Pretoria.

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12 The third respondent is **LEANDA-MARSHA MTSHALI N.O.**, an adult businesswoman who is cited in her capacity a member of the Council which conducts business from The Forum Building, Corner Struben and Bosman Streets, Pretoria.

13 The fourth respondent is **RICKIE RENNIE N.O.**, an adult businessman who is cited in his capacity as a member of the Council which conducts business from The Forum Building, Corner Struben and Bosman Streets, Pretoria.



14 The fifth respondent is **EMMANUEL MBUWE N.O.**, an adult businessman who is cited in his capacity as a member of the Council which conducts business from The Forum Building, Corner Struben and Bosman Streets, Pretoria.

15 The sixth respondent is **PATRICIA MANTSINA N.O.**, an adult businesswoman who is cited in her capacity as the Secretary of the Council which conducts business from The Forum Building, Corner Struben and Bosman Streets, Pretoria.

16 The seventh respondent is **ANDRIES NTJANE N.O.**, an adult businessman who is cited in his capacity as the Deputy Director: Licensing and Permits of the Council which conducts business from The Forum Building, Corner Struben and Bosman Streets, Pretoria.

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17 The Eighth respondent is the Air Services Licensing Council, a juristic person established in terms of section 3 of the Air Services Licensing Act 115 of 1990 ("**the Act**") and which conducts business from The Forum Building, Corner Struben and Bosman Streets, Pretoria. The eighth respondent is represented by the first to seventh respondents in their capacities as members appointed in terms of section 4 of the Act.

NATURE OF THE APPLICATION



18 This is an urgent appeal in terms of s.25 of the Act against the decision of the Council given in terms of s.20(1)(b) of the Act and in terms of which the Court is requested, in terms of s.25(2)(a) of the Act, to set aside the decision of the Council to suspend Comair's licences **NO67D** and **SO66D** ("the licences") as communicated by the Council to Comair in its letter to Comair dated 3 August 2022.

JURISDICTION

19 The above Honourable Court has jurisdiction to adjudicate this application by virtue of the application of s.25 of the Act and as the majority of the applicants and the respondents conduct business within the Court's geographical area of jurisdiction.

20 The facts and circumstances giving rise to this application are set out below.

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BACKGROUND

21 Comair commenced business in 1946 as an aviation company. At the time of the commencement of its business rescue, it was considered one of the largest commercial airlines in Southern Africa, employing over 2,000 employees and operating twenty-six aircraft which, *inter alia*, facilitated business and tourism in South Africa.

22 Comair operated its air service under the brand names of British Airways and Kulula.com. The use of the British Airways name and livery was regulated by a franchise agreement between British Airways Plc and Comair that was concluded in 1996. The British Airways flights were operated domestically and regionally as a full-service airline whereas the Kulula.com flights were operated domestically as low-cost flights, with no complimentary food and beverages and no business class being offered.

23 Comair was significantly affected by the unprecedented economic effects of the Covid-19 pandemic, the travel bans imposed by the President of South Africa and the nationwide lock-down ordered by the President on 23 March 2020 in terms of the Disaster Management Act 57 of 2002 and the regulations promulgated thereunder.

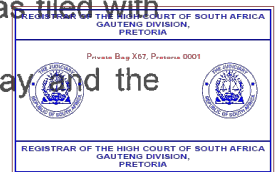
24 Due to the lock-down, and from 26 March 2020, Comair was forced to suspend all flights operated by it, namely the British Airways and Kulula.com flights.



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25 The unprecedented effects of the Covid-19 pandemic and lock-down, resulted in Comair finding itself in financial distress and Comair determined, in May 2020, that it would not be in a position to pay its debts within the ensuing six months in terms of s.128(1)(f)(i) of the Companies Act 71 of 2008 ("the Companies Act").

26 On 4 May 2020, the Board of Directors of Comair Limited passed a resolution to commence business rescue proceedings. The relevant notice was filed with the Companies Intellectual Property Commission on the same day and the business rescue proceedings commenced on 5 May 2022.



27 After two years in business rescue, Comair's business rescue practitioners, Mr Richard Ferguson and Mr Neil Hablutzel, determined, for a number of reasons, that no reasonable prospect existed for the company to be rescued and they accordingly filed the required notice in terms of the provisions of the Companies Act terminating the business rescue.

28 As a result of the above, the business rescue practitioners were obliged to seek an order to discontinue the business rescue of Comair and to place the company into liquidation.

29 On 9 June 2022, the business rescue practitioners instituted an application, to be heard as one of urgency, and in terms of which an order was sought that *inter alia*, the business rescue be discontinued, and that Comair be provisionally wound-up.

Handwritten initials 'N' and the number '8' with a signature-like flourish below it.

30 On 14 June 2022, an order was granted by the High Court of South Africa, Gauteng Division, Johannesburg, in terms of which it was ordered, *inter alia*, that Comair's business rescue be discontinued and that it be provisionally wound-up. A copy of the order placing Comair under provisional winding-up, is attached marked "FA7".

31 It will be noted from annexure "FA7" that the return date issued was 14 June 2022.



32 On 23 June 2022, the applicants were appointed the joint provisional liquidators of Comair and I refer to their certificate of appointment referred to above and attached as annexure "FA1".

33 On 28 June 2022, the applicants instituted an application in terms of which they sought an order to extend the applicants' powers. The application was brought on an urgent basis and in terms of section 386(5), alternatively, section 387(3) of the Companies Act, 61 of 1973. An order was granted by the Court, and I refer to annexure "FA2" in this regard

34 In so far as the provisional liquidation of Comair is concerned, on 26 July 2022, the Court extended the *rule nisi* until 13 December 2022. A copy of the aforementioned order is attached marked "FA8".

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THE CORRESPONDENCE

- 35 On 12 July 2022, I received correspondence from the Council, a copy of which is attached marked "FA9".
- 36 Annexure "FA9" reads, *inter alia*, as follows -

"2. The Air Services Licensing Council ("Council") held its ordinary council meeting on 24 June 2022 and at the said meeting resolved under Council Resolution No. 11/24/06/2022 that it suspects, on reasonable grounds, that Comair Limited ("Comair") has failed to comply with section 20(1) of the Air Services Licensing Act No. 115 of 1990 ("Act"), which warrants the suspension and/or cancellation of its existing licence(s).



3. To this end, please be kindly advised that council hereby extends an invitation to the duly appointed Liquidator(s) to appear before it in accordance with the provisions of section 16(3) read together with section 20(2) of the Act, for the purposes of addressing representations to it regarding the suspicions referred to in paragraph 2 above.
4. In accordance with the provisions of section 24 of the Act, council wishes for the Liquidator(s) to address it on the status of the airline and further instructs that the following documents be provided to it in 7 (seven) fold, within 7 (seven) calendar days of receipt of this letter, and hand delivered to the office of the council Secretariate, for the attention of Miss Patricia Mantsina:

- 4.1. Air service licences;

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- 4.2. *latest consumer guarantee;*
- 4.3. *proof of actual operations for the past 12 (twelve) months;*
- 4.4. *information pertaining to routes currently not being used and reasons for the failure to utilise same;*
- 4.5. *prescribed statistical information for the past 12 (twelve) months;*
- 4.6. *Air Operators Certificate (AOC);*
- 4.7. *operations specification (Opspec)."*



I was informed that the meeting would take place on 3 August 2022, and I was further informed of the time and venue.

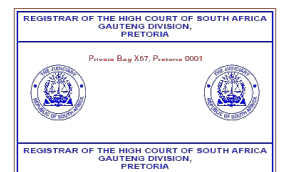
37 I point out that in view of the Council's inexplicable change in front, referred to below, it is necessary to point out that this was only the start of a lamentable failure on behalf of the Council and its members to act in accordance with the behests of the Air Services Licensing Act 115 of 1990 ("the Act").

38 It is clear from the contents of section 20 of the Act properly interpreted and applied, that:

38.1 The Council may, if on reasonable grounds, it suspects that a licensee has failed to comply with the provisions of the Act, either:

- i. direct such licensee to comply with such provisions within the period determined by the Council;
- ii. suspend the license concerned on conditions determined by the Council for a period not exceeding two years; or
- iii. cancel the license concerned.

39 However, section 20(2) specifically provides that:

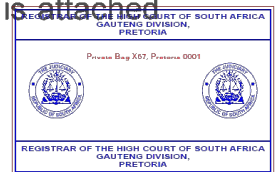


- (2) No license shall be suspended or cancelled in terms of subsection (1)(b) or (c) unless
 - (a) the Council has notified the licensee in writing of its suspicions, stating the grounds for such suspicions; and
 - (b) the Council has given the licensee the opportunity to address the representations to the Council, within the period determined by the Council, regarding these suspicions.

40 It is clear from the contents of the aforesaid letter and more particularly paragraph 2 thereof that the Council failed to comply with the peremptory requirements of section 20(2) in that it failed either to notify Comair/the liquidators of its suspicions or even if it did (which I deny) it failed to provide details in respect of the grounds for such suspicions.

41 On 15 July 2022, I addressed correspondence to the Council informing them that I accepted the invitation and that I would attend the meeting on 3 August 2022. A copy of my letter addressed to the Council is attached marked "FA10".

42 On or about 28 July 2022, a pack of documents was delivered by Comair to the Council marked for the attention of Ms Patricia Mantsina, the sixth respondent. A copy of the letter addressed to the Council, dated 28 July 2022, is attached marked "FA11". Annexure "FA11" reads, *inter alia*, as follows -



"We refer to the above-mentioned letter with REF: meeting #9 of 2022 and Res No: Council Resolution No. 11/24/06/2022, the submission of the following requested documentation:

1 - Air Service licences

2 - Latest Consumer Guarantee

3 - Proof of actual operations in the last 12 months

4 - Information pertaining to routes currently not being utilised and reasons for the failure to utilise same

5 - Air operations certificate (AOC)

6 - Operations specification (Opspec)"

43 The pack of documents was provided under cover of a table of contents marked with the relevant item and documentation descriptions. The table of contents is attached marked "FA12".

44 In order to avoid the undue prolixity of these papers, I have not attached the pack of documents to this application, but should the above Honourable Court require same, it can be made available at the hearing of the matter.

45 On 3 August 2022, I attended the meeting before the Council.

46 The meeting commenced at 11:55 and the representatives of the Council who were in attendance included the first, second, third, fourth and sixth respondents. One Elizabeth Mpye was also in attendance on behalf of the Council. The fifth and seventh respondents were not present.



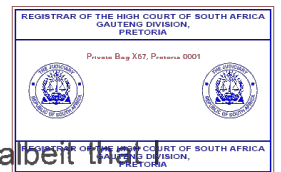
47 I have attached marked annexure "FA13", a minute or "record of notes" which my assistant Ms Caroline Pelser ("Ms Pelser") took at the meeting. In addition to the foregoing, and as the Council did not indicate that the meeting was being recorded, I arranged for a recordal of the meeting by Ms Pelser which can be made available if required. Ms Pelser's confirmatory affidavit in this regard is attached marked "FA14".

48 It will be noted that the meeting concluded on the basis that I was to provide the Council with certain information and documentation relating to the confirmation of Comair's status and proof of the appointment of the applicants as the joint provisional liquidators of Comair. In addition, information relating to the ticket holders and the payment of refunds to them was to be provided.

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49 The Council was also informed by me that whilst I was not able to comment on matters that arose before it, prior to my appointment, I would keep the Council appraised of developments.

50 I undertook to provide the documents pertaining to the provisional liquidation and in respect of the liquidators' appointment, whereafter a new meeting date with the Council could be arranged. I further informed the Council that anything that "*happens*" would be communicated to it.



51 On the same day, 3 August 2022, the Council prepared a letter, albeit that I only received it on 5 August 2022, a copy of which is attached marked "**FA15**". It begs the question how the meeting, which commenced at 11:55, concluded on the basis which it did and then the letter was prepared by the Council on the same day.

52 This letter and communication is incomprehensible and ignores the requirements of the Act and the rights and obligations of the members of the Council as well as the failure to have regard to the interests of Comair and its creditors.

52.1 Firstly, it is difficult to comprehend how the fact that Comair was placed under provisional liquidation on 14 June 2022 and that the return day was extended on 26 July 2022 constitutes a direct violation of section 19(d) of the Act. The return date has been extended to the 13th of December 2022, a fact which was told to the Council at the meeting on

3 August and was communicated in my correspondence of 5 August referred to below;

52.2 Secondly, equally difficult to comprehend, is how this alleged violation (which I deny) would constitute a ground for suspension, since if it is correct, the license lapses on sequestration or winding-up of the estate as the case may be, neither of which have occurred for reasons which I will amplify on later in this affidavit; and



52.3 Thirdly, it was never put to me or stated during the course of the meeting that the Council intended to “suspend” the Comair licenses on the basis of a direct violation of the provisions of section 19(d) of the Act.

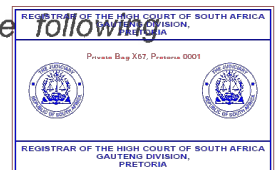
53 It is quite clear from the foregoing that there has been a failure on the part of the Council to apply its mind properly to the issues at stake and that it was intent on cancelling and/or suspending the Comair licenses, even if there was no basis therefor. This inference is justified in the later correspondence to which I refer hereunder.

54 On receipt of the above correspondence on 5 August 2022, I forwarded the correspondence to the applicants' attorneys of record for attention and reply particularly as by then, I had provided the Council with all information and documentation requested in July 2022 and thereafter at the meeting which I attended before the Council on 3 August 2022.

55 On 5 August 2022, I responded to the Council on the issues raised by them with me at the meeting. A copy of my letter is attached marked "FA16";

56 Annexure "FA16" reads as follows -

"We refer to our meeting of 3 August 2022, during which meeting we undertook to provide you with certain information regarding the liquidation process of Comair Limited (In Provisional Liquidation). In this regard, we attach herewith the following information and/or documents:



- 1. Court order dated 14 June 2022 in terms of which the company was placed in provisional liquidation.*
- 2. Court order dated 26 July 2022 in terms of which the return date was extended to 13 December 2022.*
- 3. Certificate of Appointment dated 23 June 2022 confirming the appointees in this matter.*

We have requested the attorneys of record to provide your office with a full set of the application and extension papers which set out the basis for the granting of the provisional liquidation order by the erstwhile business rescue practitioners and the basis for the extension of the provisional order.

We are in the process of extracting the relevant information concerning the outstanding ticketholders and hope to provide you with the information soon. We will also, as part of that submission, provide you with the details of how we intend dealing with the outstanding ticketholders as part of the liquidation process.

You are more than welcome to contact us, should you require any additional information. We trust you find this to be in order."

57 The information contained in my correspondence had already been communicated by me to the Council at the meeting on the 3rd of August. In other words, I had advised the members *inter alia* of the date of the granting of the provisional winding-up order, the return date as well as the extension of the return date to 13 December 2022. I furthermore advised the Council of the date of the appointment of the liquidators. It was the supporting documents in respect of the foregoing which I was to provide but the information relating to the provisional winding-up of Comair was imparted to the Council members at the meeting. This renders the Council's letter of 3 August baffling.



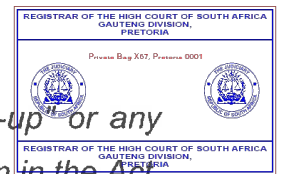
58 On 12 August 2022, the applicants' attorneys, Werksmans Incorporated ("Werksmans") addressed correspondence to the Council, a copy of which is attached marked "FA17".

59 Annexure "FA17" states, *inter alia*, as follows -

"2. *Our client has handed to us your letter dated 3 August 2022 in terms of which it is stated that -*

2.1. *in accordance with the provisions of s20(1)(b) of Act 115 of 1990 ("the Act"), Comair's licences NO 67D and SO66D, are suspended for two years; and*

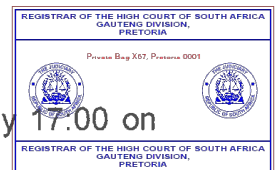
- 2.2. *the ground provided for the above suspension of Comair's licences is the provisional liquidation of Comair, which is in violation of s19(1)(d) of the Act.*
3. *Our client does not accept the suspension of Comair's licences on the above grounds or at all.*
4. *Section 19(1)(d) provides that a licence is issued on condition that it shall lapse as soon as the estate of the licensee is sequestrated or wound-up.*
5. *There is no definition of "sequestration" or "winding-up" or any references to the Insolvency or Companies Legislation in the Act.*
6. *Accordingly we refer you to the case authority of **Engelbrecht N.O. and Others v Zuma and Others 2015 (3) All SA 590 GP.***
7. *Furthermore even if it is contended that Comair has been liquidated as envisaged in section 19(1)(d), which it is denied, the suspension itself is flawed. If a licence lapses on a sequestration or liquidation of the licensee, it begs the question how the licences can then be suspended. In other words, if it is alleged that Comair's licences have lapsed by virtue of the operation of section 19(1)(d) of the Act (this too is denied) then the licenses cannot be suspended. One cannot suspend something that has already lapsed.*
8. *The above said and as Comair is compliant in all respects with the other requirements pertaining to its licences, as was demonstrated by our client at the meeting held with your representatives [at which you did not take issue with or indicate that the council intended to suspend the licences on the basis of the company being in provisional liquidation and in terms of*



section 19(1) (d)] and thereafter in the documentation provided to you, we request that you provide a retraction / withdrawal of the suspension of the licences as there is no lawful basis therefore.

9. *Bearing in mind the severe implications of the suspension of Comair Limited's licences, we have been instructed to request that the retraction / withdrawal of the suspension be provided by no later than 17:00 on Thursday 18 August 2022, and that pending the foregoing, no action will be taken by you to compromise or prejudice the licences in any respect."*

60 The demand was made for the Council to revert to Werksmans by 17.00 on Thursday, 18 August 2022.



61 At 22:06 on 18 August 2022, Werksmans received a response from the Council, a copy of which is attached marked "FA18".

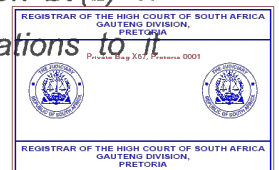
62 Annexure "FA18" provides a synopsis of the role of the Council and whilst it purports to address the content of annexure "FA17", being the letter from Werksmans, it does not do so. The only response to the content of Werksmans correspondence is addressed from paragraph 4 of the letter.

63 The letter states as from paragraph 4 as follows -

"4. *Council at its meeting of 24 June 2022 had resolved under Council Resolution No. 11/24/06/2022 that it suspects, on reasonable grounds, that your Client had failed to comply with the provisions of the Act, which warranted the suspension and/or*

cancellation of its existing licence(s) in accordance with section 20(1) of the Act.

5. *In accordance with the provisions of section 24 of the Act, Council humbly requested your client to address it on the status of the airline and further instructed that various documentation be provided to it. Your client was further invited in a letter dated 12 July 2022 to appear before Council in accordance with the provisions of section 16(3) read together with section 20(2) of the Act, for the purposes of addressing representations to it regarding the suspensions aforementioned.*



6. *Upon your client concluding its representations to Council, which proceedings were held on 3 August 2022, coupled with Council's assessment of the documentation provided to it, Council ascertained gross non-compliance with the Act, the Domestic Regulations 1991 and in respect of Licence Conditions, all of which warranted the suspension of the licences concerned and the said suspension was duly communicated to your client.*
7. *Your client is, with respect, reminded that the **suspension for licence number: NO67D and licence number SO660, for a period of 2 (two) years remains.** Council wishes to reiterate and place on record that upon a diligent reading of the provisions of the Act and the Domestic Regulations 1991, you will note that the remedial procedures provided for those who are aggrieved by the decisions of the Council resolved in accordance with section 20(1)(b) of the Act.*
8. *Council wishes to further place on record that its not its intention to litigate through correspondence and our rights remain strictly reserved."*

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64 I state that the change in front is regrettable and was probably motivated by the fact that the Council realised that the grounds for cancellation, namely the liquidation of Comair could not be sustained, since Comair had been placed under provisional liquidation and the Act properly construed, more particularly section 19(b), only operates in circumstances where the licensee (Comair) is finally wound up, which did not occur *in casu*.

65 Moreover, recourse to:



65.1 Gross non-compliance with the Act, the Domestic Regulations 1997 and in respect of License Conditions appears to be an afterthought and a contrivance. In any event, it is not possible to discern from the slender and unmotivated references to the alleged non-compliance precisely what conduct, and in what manner, Comair is alleged to have failed to comply with the provisions of the aforementioned legislation and in respect of which sections specifically. The inability to state the precise nature of the breaches is telling, so too the change in front. I once again draw attention to the failure to comply with section 20(2)(a) of the Act. Appropriate legal argument will be addressed to this court at the hearing of the application.

66 In response to the above, and on 22 August 2022, Werksmans addressed correspondence to the Council, a copy of which is attached marked "FA19".

67 Briefly it was stated in annexure "FA19" that -

- "2. *The reasons provided in your letter under reply for the suspension of the licence numbers: NO67D and SO660, differ to those provided in your previous correspondence. This is unlawful and impermissible.*
3. *We do not intend to deal with the remaining allegations in your correspondence under reply and our failure to do so is not to be construed to be an admission of same. Our client's rights to deal with the said allegations at the appropriate time and in the appropriate forum remain strictly reserved together with all our client's other rights."*

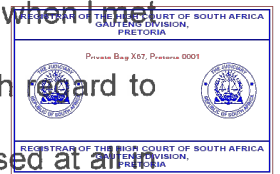


68 The following appears from the Council's response of 18 August 2022 -

68.1 it is stated in paragraph 4 that on 24 June 2022, the Council resolved that it suspects on reasonable grounds that "your Client" had failed to comply with the provisions of the Act;

68.2 the resolution was adopted a day after the appointment of the applicants who had just assumed their positions as the joint provisional liquidators and assumed control of the company in provisional liquidation. In this regard I refer to the certificate of appointment of the joint provisional liquidators reflecting their appointment on 23 June 2022 (annexure "FA1"). They could not have been in breach or violation of any legislation by that date as not only had they not effectively taken control of the company but their powers to do anything on its behalf had not yet been extended.

68.3 on 12 July 2022, correspondence was addressed to me inviting me to attend the meeting on 3 August 2022, but prior to that, all documentation requested on 12 July 2022, was provided under cover of the letter of 28 July 2022, being annexure "FA11". To date, no response has been received from the Council with comment, inviting further address nor has anything been stated by the Council in regard to the bundle of documents and information provided on 28 July 2022. In fact, when I met with the Council on 3 August 2022, no issue was raised with regard to the documents provided on 28 July 2022. This is not addressed at all in the Council's correspondence; and

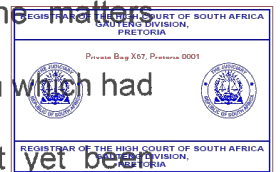


68.4 the only issues communicated to me at the meeting on 3 August 2022, as appears from the record of notes, was the alleged failure by the business rescue practitioners to communicate with the Council, the status of the company and the issue with regard to ticketholders. This was addressed in my letter of 5 August (annexure "FA16"). This too is not addressed in the letter.

69 Accordingly, each issue raised by the Council was addressed and to the extent that it remained to be addressed (the issue with regard to the payment of refunds to ticket holders), the applicants were in the process of collating information by the time the notification of the suspension of the licences was received as communicated in the Council's letter dated 3 August 2022.

70 In fact, no time at all was provided for the liquidators to comply with the requests at the meeting of 3 August 2022 as the letter suspending the licences was issued later that same day.

71 It is not certain as to what is meant in paragraph 6 of the Council's letter that "*coupled with the Council's assessment of the documentation provided to it*", Council ascertained gross non-compliance with the Act. No indication is given as to what documentation was considered bearing in mind the matters discussed at the meeting and the further documents and information which had been requested from me on 3 August 2022 and which had not yet been provided by the time the letter of 3 August 2022 was despatched.



72 In addition to the above, no indication is given as to the respects in which there has been alleged "*gross non-compliance with the Act*" as alleged by the Council, thereby affording the applicants the right to deal with and address such allegations or contentions as to non-compliance, as provided for in the Act.

73 Moreover, it will undoubtedly be noted that in the letter of 3 August 2022, in terms of which Comair's licences were suspended, the ground upon which the licences are allegedly suspended is that the fact that Comair was placed under provisional liquidation with the return date having been extended to 13 December 2022, is in direct violation of the provisions of s.19(1)(d) of the Act thus warranting "*the immediate suspension of your Air Service Licences*".

74 It was pointed out to the Council that s.19(1)(d) of the Act provides that a licence is issued on condition that it shall lapse as soon as the estate of the licensee is sequestrated or wound-up but there is no definition of "*sequestration*" or "*winding-up*" or any references to the insolvency or company's legislation in the Act.

75 The Council was furthermore referred to the case authority of *Engelbrecht N.O. and Others v Zuma and Others* 2015 (3) All SA 590 GP.



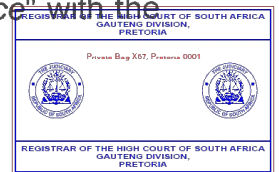
76 Further, the argument that the licence lapses on a sequestration or liquidation means that the Council could not suspend the licence. In other words, if Comair's licences have lapsed by virtue of the operation of s.19(1)(d) of the Act (as contended for in the letter of 3 August 2022), then the licences could not be suspended. One cannot suspend something that has already lapsed.

77 Comair is in provisional liquidation and bearing in mind the case authority referred to above and the absence of any definition of "*liquidation*" in the Act, it is submitted that s.19(1)(d) is of no application and is not a valid and lawful ground for the Council to have suspended the licences.

78 Perhaps, when realising this, the Council then resorted to an overbroad "*gross non-compliance*" with the Act and yet no specification is provided as to what constitutes this alleged gross non-compliance with the Act to enable the applicants to respond thereto.

79 Every query and request for documentation, as well as the request for a meeting, has been met by the applicants and yet the inexplicable submission remains that there has been gross non-compliance with the Act. The Council has failed to specify, as it was obliged to do in terms of section 20(2) of the Act, the grounds for its suspicions and the alleged acts of non-compliance.

80 Accordingly, there is no basis for the suspension of the licences either in terms section 19(1)(d) of the Act or on the basis of "*gross non-compliance*" with the Act or on any other basis.



81 Therefore, the applicants are entitled to invoke the provisions of s.25 of the Act and to request the above Honourable Court to set aside the decision of the Council to suspend its licences as no lawful basis has been set out therefore and it is contended that the suspension is unlawful, irregular and impermissible. S.25 of the Act states, *inter alia*, as follows -

"25 *Appeal*

(1) *Any person who feels aggrieved -*

(a) *by the refusal of the council to issue that person their licence;*

(b) *by a decision of the council in terms of section 20(1)(b) or (c);*

(c) *....*

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may in the prescribed manner appeal against such refusal or decision to the Provincial or Local Division of the Supreme Court of South Africa having jurisdiction in the area within which such person is resident, within 30 days after he, she or it became aware of such refusal or decision, or within such further period, no exceeding two months, as the said court may allow on good cause shown.

2. *The court referred to in sub-section (1) may -*

- (a) *confirm, vary or set aside the refusal or decision of the council;*
- (b) *give such other decision as the council would have been able to give; or*
- (c) *remit the case to the council with such instructions as the court may deem fit.*



..."

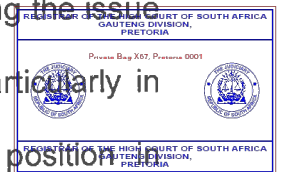
82 The conduct of the Council is not only irregular and impermissible but demonstrative of authoritarian conduct prejudicial to the insolvent company which will have a devastating effect on the winding-up of Comair and any potential recovery for its creditors.

83 The applicants are provided with a remedy to exercise their rights in terms of s.25 of the Act which provides for an appeal against the decision of the Council.

URGENCY

84 I state that the matter is one of extreme urgency and that the applicants will not be afforded substantial redress at a hearing in due course. I say so for the following reasons:

84.1 As appears from the correspondence referred to above, the applicants attempted to engage with the Council with a view to resolving the issue without the necessity of resorting to court proceedings, particularly in circumstances where the applicants occupy a fiduciary position in relation to both Comair and its creditors and wished to avoid the unnecessary incurrence of legal costs;



84.2 The applicants act in a fiduciary duty and are obliged to act in the best interests of Comair and its general body of creditors. It is of extreme importance and the utmost urgency that there is certainty as to the status of the impugned licenses, since they are extremely valuable and will have a material impact on bids received by the applicant for the assets, business and licenses of Comair. Self-evidently, if there is uncertainty as to whether or not the licenses are valid, this will have a material impact on offers made to the liquidators, which will have a material impact on the interests of the general body of creditors;

84.3 The applicants have acted with due expedition in approaching this Honourable Court and I point out that:

84.3.1 The last correspondence with the Council occurred on 22 August 2022 as described above, which I state in the circumstances was a prudent course to adopt;

84.3.2 Immediately, the respondent's attitude became known, the applicant's attorneys of record commenced the drafting of this application with the assistance of senior counsel;

84.3.3 Senior counsel required further information from our attorneys which was then incorporated in a further draft submitted to senior counsel on 24 August 2022;

84.3.4 The final papers were settled on 25 August 2022.

84.4 In the circumstances, I state that this Honourable Court should entertain the matter as one of urgency, given the importance of the matter and the extreme adverse consequences which will ensue if the issue in relation to the licenses is not resolved as a matter of urgency.

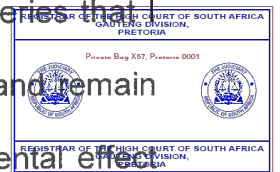
84.5 I state that the issues in relation to the dispute between the applicants on the one hand and the respondents on the other fall within a fairly narrow compass and that the time periods allowed for the filing of affidavits are more than reasonable and will allow a just and expeditious determination of the issues between the parties.



85 The last correspondence exchanged with the Council was on 22 August 2022.

86 I consulted further with Werksmans on 22 August 2022 regarding the matter and the redress the applicants seek has based on the conduct of the Council.

87 It was determined that there was no alternative but to approach the Court on an urgent basis for relief as it is evident that regardless of the queries that I have addressed and the documents provided, the Council were and remain determined to suspend Comair's licences, ignorant of the detrimental effect such unlawful conduct has on the winding-up process and in respect of the potential recovery for creditors and the consequences for its employees.



88 From the time of the granting of the order extending the applicants' powers (annexure "FA2") on 28 June 2022, the applicants immediately began the exercise of the realisation of the assets of the Comair. This is a matter of constant concern to the applicants as the costs associated with the insurance and maintenance of Comair's aircraft are approximately R9 million per month.

89 I have been in communication with many interested parties since June and approximately 34 parties have, over the last two months, expressed interest in acquiring the assets of Comair and/or its business as a going concern. On 19 August 2022, the applicants, in order to formalise the above process and to ensure that all prospective purchasers were aware of exactly what is to be sold, dispatched the invitations to submit offers. Attached marked "FA20" is the

"Invitation to Submit Offer Documents" which has been submitted to the thirty-four parties who have expressed interest in acquiring the business and assets of Comair and with which I have been communicating since June 2022. It will be noted that in order to realise the best possible value for the creditors, the offer document has been prepared on the basis that Comair be sold as a business inclusive of its licences which the Council is well aware cannot be transferred. Offers from interested parties are to be submitted by no later than 12:00 on 16 September 2022.

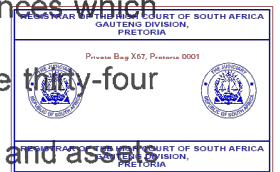


- 90 The process to dispose of Comair's business and assets had to commence and proceed without delay due to the significant monthly costs being incurred by the applicants in relation to insurance and the maintenance of the aircraft. This cost of approximately R9 million per month erodes the potential recovery for the creditors of the company and the applicants need to ensure that this enormous expense is curbed and/or eradicated as a matter of urgency.
- 91 The conduct of the Council and the unlawful / irregular suspension of Comair's licences places the entire process in jeopardy and presents a massive potential loss to the creditors of Comair and especially its employees as the suspension of the licences destroys any possibility of a recovery for creditors and of saving jobs.
- 92 The authoritarian and dictatorial manner in which the Council have conducted themselves, without following due process, if indeed the submission remains

that the licences have been suspended due to gross non-compliance with the Act, cannot be condoned.


93 If the Council remains of the view (as initially communicated in its letter of 3 August 2022) that the licences have lapsed due to the liquidation of Comair in terms of s.19(1)(d) of the Act, the Council is wrong.

94 In either instance, there is no basis for the suspension of the licences which suspension is irregular and impermissible. In circumstances where thirty-four interested parties have been invited to make offers for the business and assets of Comair of which the licences are a vital part, it is evident that if the licences are not part of the business and assets, the likelihood of a potential recovery for the creditors and a possible retention of jobs for the employees, is severely prejudiced.




95 I submit that the matter is urgent and needs to be determined by the Court without any delay.

96 I humbly request the above Honourable Court to grant an order as prayed for in the notice of motion to which this affidavit is attached.

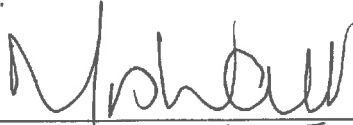


CLOETE MURRAY

I certify that this affidavit was signed and sworn to before me at


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on this the 26 day of AUGUST 2022 by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words: 'I swear that the contents of this affidavit are both true and correct, so help me God.'



~~COMMISSIONER OF OATHS~~

Name:

Address:

Capacity:

MADALENA FRANCINA MARGARETHA VAN DER WA
Commissioner of Oaths by Appointment
Reference Number: 1/8/4 10.05.2017
The Central, 96 Rivonia Rd
Johannesburg, 2193



DEPARTEMENT
VAN JUSTISIE



DEPARTMENT
OF JUSTICE

SERTIFIKAAT VAN AANSTELLING VAN * * VOORLOPIGE LIKWIDATEUR(S)/
LIKWIDATEUR(S)/VOORLOPIGE GEREGETELIKE BESTUURDER/
GEREGTELIKE BESTUURDER

[Maatskappywet, No. 61 van 1973 (soos gewysig); Wet op Beslote Korporasies, No. 69 van 1984]

CERTIFICATE OF APPOINTMENT OF * PROVISIONAL LIQUIDATORS(S)
LIQUIDATOR(S) / PROVISIONAL JUDICIAL MANAGER/
JUDICIAL MANAGER

[Companies Act, No. 61 of 1973 (as amended); Close Corporations Act, No. 69 of 1984]

No: G000613/2022

Hierby word gesertifiseer dat

This is to certify that CLOETE MURRAY, KGASHANE CHRISTOPHER MONYELA, AHMED CARIM,

TRACY ANNE CAMERON & BUHLE JEFFREY ERIC BUTHELEZI

SECHABA TRUST

P O BOX 11889

THE TRAMSHED, 0126



aangestel is as * Voorlopige Likwidateur / Voorlopige Geregte Like Bestuurder met die magte soos uiteengesit in Artikel
van Wet No. van van

*is/are appointed * Provisional Liquidator (s) / Provisional Judicial Manager with the powers as set out in Section
386(1)(a)(b)(c)(d)(e) & 4(f) of Act No. 61 of 1973 of

die *Maatskappy / Beslote Korporasie bekend as
the *Company / Close Corporation known as COMAIR LIMITED

1967/006783/06

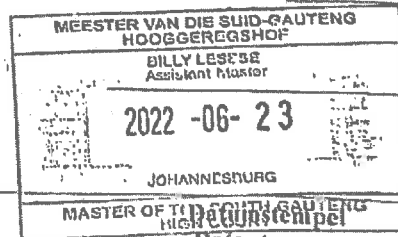
wat onder *Voorlopige Likwidasie / Voorlopige Geregte Like Bestuur geplaas is *op Bevel van die Hooggeregshof
which has been placed under *Provisional Liquidation / Provisional Judicial Management *by Order of the

van Suid-Afrika Afdeling/Landdroshof
High Court of South Africa SOUTH GAUTENG HIGH COURT
Division/Magistrate's

vir die distrik van /deur
Court for the district of /by

Spesiale Besluit geregistreer op 14 JUNE 2022
Special Resolution registered on

Geteken te JOHANNESBURG op
Signed at on



Asst. Meester van die Hooggeregshof
Asst. Master of the High Court

+ 28/6/2022
hore

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2022/22253

On this the 28th of June 2022
Before the Honourable Makume J

In the *ex parte* application of:

CLOETE MURRAY N.O.

First Applicant

KGASHANE CHRISTOPHER MONYELA N.O.

Second Applicant

AHMED CARIM N.O.

Third Applicant

TRACY ANNE CAMERON N.O.

Fourth Applicant

BUHLE JEFFREY ERIC BUTHELEZI N.O.

Fifth Applicant



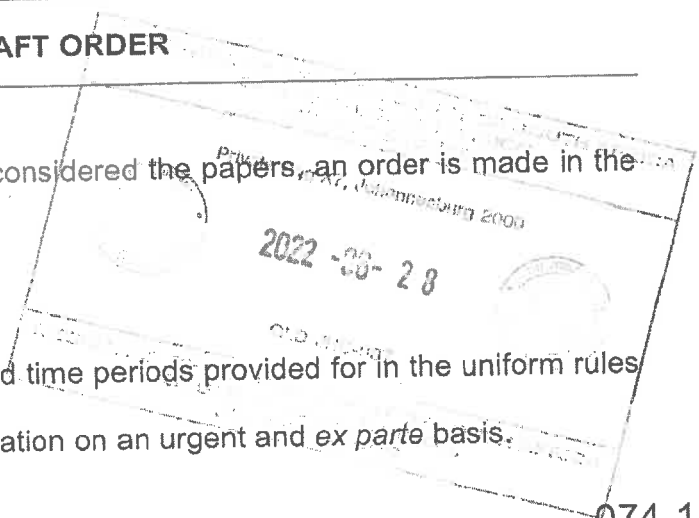
[In their capacities as the joint provisional liquidators of COMAIR LIMITED (in provisional liquidation)]

FOR AN ORDER IN TERMS OF SECTION 386(5) AND/OR SECTION 387(3) OF THE COMPANIES ACT 61 OF 1973 AS READ WITH ITEM 9 OF SCHEDULE 5 OF THE COMPANIES ACT 71 OF 2008

DRAFT ORDER

HAVING heard Counsel and having considered the papers, an order is made in the following terms:

- 1 Dispensing with the service and time periods provided for in the uniform rules of court and hearing this application on an urgent and *ex parte* basis.



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2 Authorising the applicants to bring this application in terms of section 386(5) alternatively section 387(3) of the Companies Act 61 of 1973 ("the 1973 Act") as read with Item 9 of Schedule 5 of the Companies Act 71 of 2008 ("the 2008 Act").

3 Granting the applicants, in terms of section 386(5) alternatively section 387(3) of the 1973 Act, as read with Item 9 of Schedule 5 of the 2008 Act, the following powers in relation to the winding-up of Comair Limited (in provisional liquidation) (hereinafter "Comair"):



3.1 To institute legal proceedings as may be necessary on behalf of the estate, particularly in regard to the following:

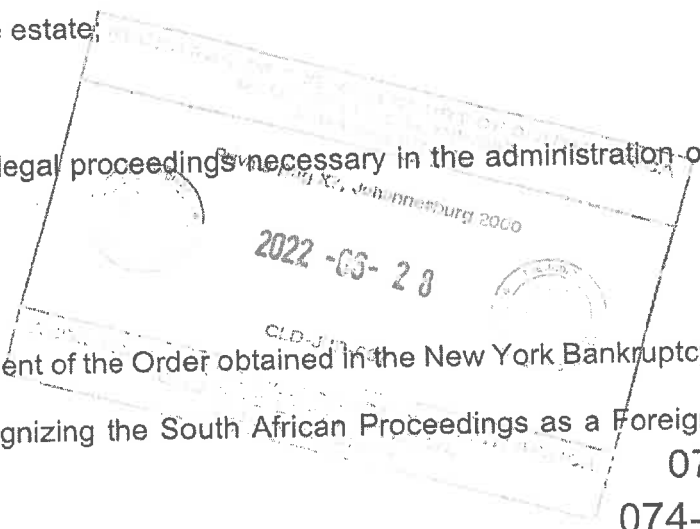
3.1.1 declaratory relief in respect of the assets of the estate;

3.1.2 proceedings to set aside dispositions made by the estate before and after the commencement of the winding-up of the estate;

3.1.3 interdict proceedings against companies and individuals on behalf of the estate;

3.1.4 any further legal proceedings necessary in the administration of the estate;

3.1.5 an amendment of the Order obtained in the New York Bankruptcy Court Recognizing the South African Proceedings as a Foreign



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Main Proceeding, with the applicants as provisional liquidators being appointed as the new foreign representative;

3.1.6 notifying the New York Bankruptcy Court that the applicants as the new foreign representative have ratified the joint business rescue practitioners' decision to obtain discovery from Boeing and that the applicants be substituted for the former foreign representative in all capacities;

3.1.7 authorising the applicants, as new foreign representative, to take any actions as deemed necessary in furtherance of the authority being conferred on the foreign representative.

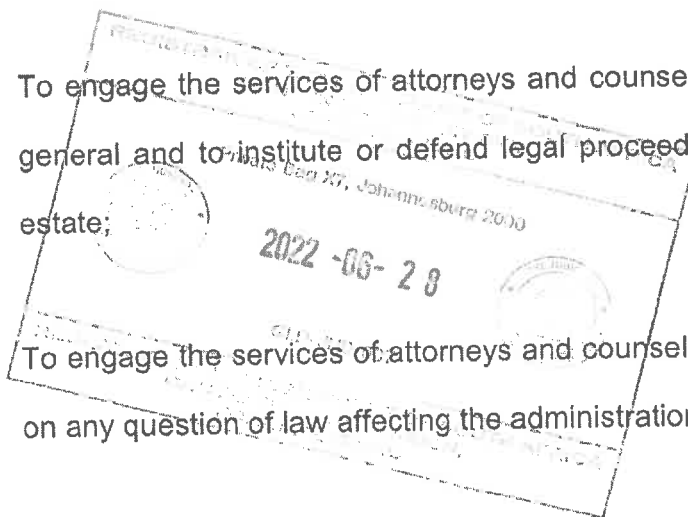


3.2 To defend or oppose legal proceedings as may be necessary on behalf of the estate;

3.3 To engage the services of attorneys and counsel in order to advise in general and to institute or defend legal proceedings on behalf of the estate;

3.4 To engage the services of attorneys and counsel to obtain legal advice on any question of law affecting the administration of the estate;

3.5 To agree with such attorneys and counsel on the tariff or scale of fees to be charged by and paid to such attorneys and counsel for the rendering of services to the estate and to conclude written agreements with



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attorneys and counsel on the basis that these costs, except costs awarded against the estate in legal proceedings, shall not be subject to taxation by the Taxing Master if the applicants have entered into a written agreement in terms of which the fees of attorneys or counsel will be determined in accordance with a specific tariff, provided only that no contingency fee arrangements shall be entered into without the prior written consent of creditors of the estate;

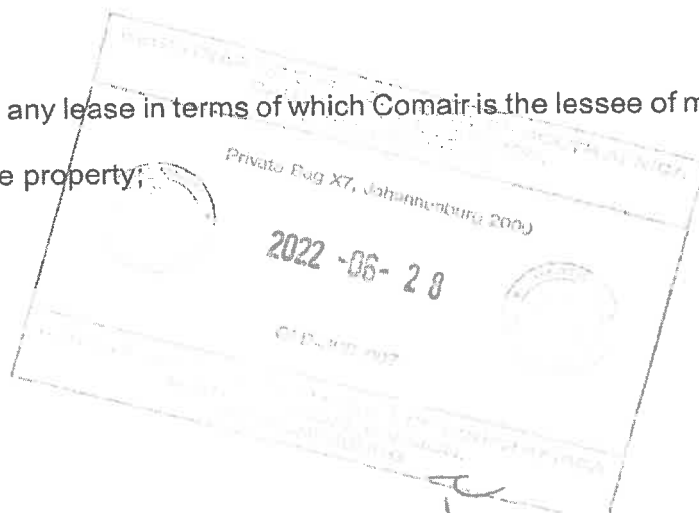
3.6 To pay the attorneys and counsel the agreed costs and the disbursements made by the attorneys and counsel out of the funds of the estate as costs in the administration of the estate as and when such services are rendered and the disbursements made;



3.7 To continue and/or settle any legal proceedings of whatever nature, whether already instituted or which may be instituted on behalf of or against the estate, on such terms as the applicants in their discretion may deem fit;

3.8 To ratify and confirm, in accordance with section 386(5) of the 1973 Act, the actions of the applicants to date hereof in respect of the engagement of attorneys and counsel;

3.9 To terminate any lease in terms of which Comair is the lessee of movable or immovable property;



074-4
074-413

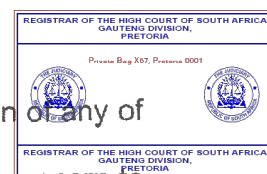
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3.10 To employ individuals or entities for the purpose of tracing assets, compiling inventories and taking possession of the assets of Comair;

3.11 To employ any individual or legal entity to investigate the trade, dealings and affairs of Comair and to value its assets;

3.12 To sell and dispose of any or all movable assets of Comair by private treaty or public auction;

3.13 To consider and accept any offer/s received for the acquisition of any of the assets of Comair or in respect of the business as a going concern to the benefit of and subject to the approval of the creditors

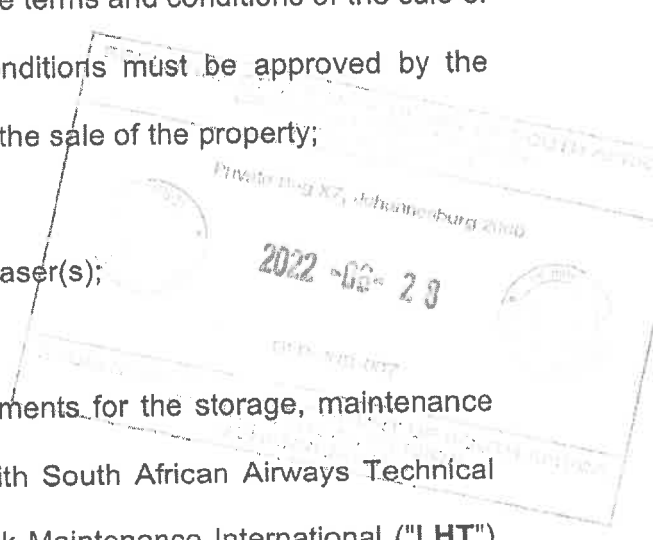


3.14 To instruct auctioneers to attend to the sale of the assets of Comair;

3.15 To inform all secured creditors of the terms and conditions of the sale of the property, which terms and conditions must be approved by the secured creditors in writing prior to the sale of the property;

3.16 To deliver movable assets to purchaser(s);

3.17 To negotiate, and conclude agreements for the storage, maintenance and preservation of the aircraft with South African Airways Technical ("SAAT") and/or Lufthansa Technik Maintenance International ("LHT") to prevent the deterioration, degradation and/or loss of value to the aircraft;

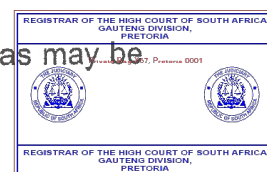


074-5
074-14

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3.18 To return assets to creditors (who hold as security for their claim/s any movable property) and to conclude all necessary agreements and to sign any necessary documentation including, but not limited to, any documentation required by the Civil Aviation Authority to give effect to such return;

3.19 To sign any documents required by the South African Civil Aviation Authority ("**SACAA**") and/or any de-registration applications as may be required;



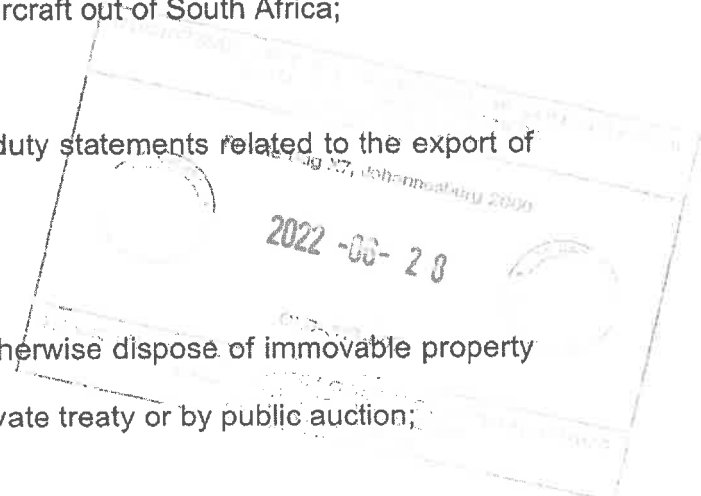
3.20 To submit any application to the SACCA for an export certificate of airworthiness to be issued by the SACCA upon completion of the "c-check";

3.21 To provide signed / certified airworthiness statements and reports in support of the transition of the aircraft out-of South Africa;

3.22 To complete any customs and duty statements related to the export of aircraft out of South Africa;

3.23 To deal with, sell, alienate or otherwise dispose of immovable property owned by Comair by tender, private treaty or by public auction;

3.24 To instruct auctioneers to attend to the sale of the immovable property;



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3.25 To inform all secured creditors of the terms and conditions of the sale of the immovable property, which terms and conditions must be approved by the secured creditors in writing prior to the sale of the immovable property;

3.26 To instruct attorneys to attend to the registration of transfer of the immovable property in the name of purchasers and for the applicants to sign all documents to effect registration;

3.27 To deal with and terminate any lease agreements in respect of the immovable properties and in respect of any lessee in occupation of the properties as the applicants deem fit;

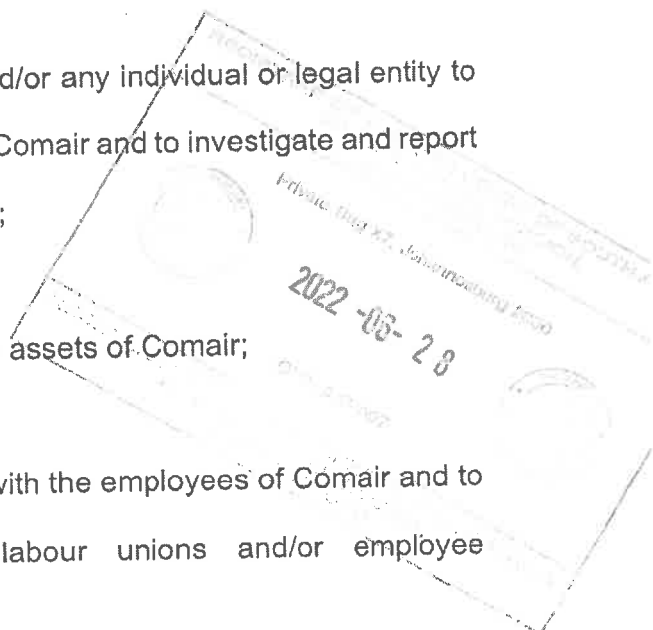


3.28 To attend to the payment of critical expenses so as not to prejudice the insolvent estate of Comair including but not limited to insurance, IT infrastructure, aircraft maintenance and personnel.

3.29 To employ auditors, accountants and/or any individual or legal entity to take over the accounting function in Comair and to investigate and report on the books and records of Comair;

3.30 To raise funds on the security of the assets of Comair;

3.31 To negotiate severance packages with the employees of Comair and to come to an agreement with labour unions and/or employee



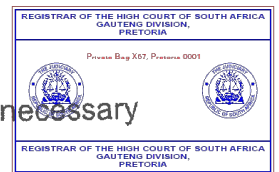
074-7
074-16

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representatives and/or employees themselves in respect of the severance packages and other labour related issues;

3.32 To appoint contractors and/or services providers to *inter alia* facilitate the process of removing all British Airways signage, intellectual property, logos and trademarks from the aircraft and other assets previously bearing such signage, logo's and trademarks, including the removal of signage from lounges, terminals or anywhere that they may appear;

3.33 To discontinue the business of Comair in so far as it may be necessary for its beneficial winding-up;

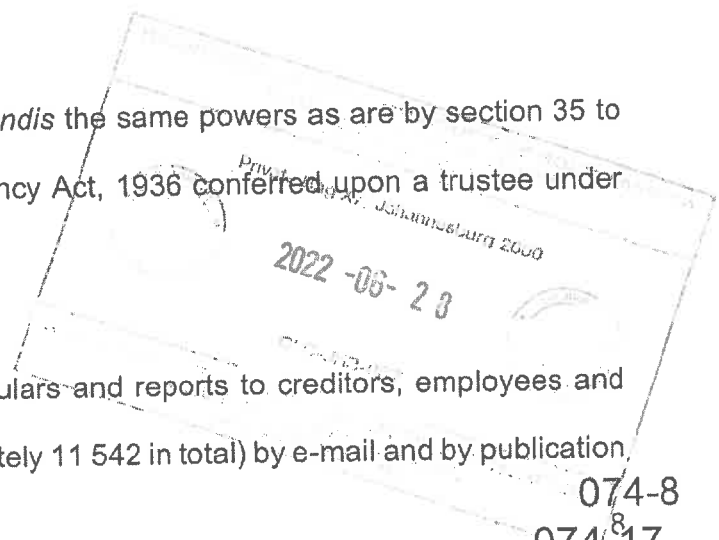


3.34 To agree to any reasonable offer of compromise made to Comair by any debtor and to accept payment of any part of a debt due to Comair in settlement thereof or to grant an extension of time or other commercial terms for the payment of such debt;

3.35 To compromise or admit any claim or demand against Comair, including an unliquidated claim;

3.36 To exercise *mutatis mutandis* the same powers as are by section 35 to section 37 of the Insolvency Act, 1936 conferred upon a trustee under the Insolvency Act;

3.37 To circulate notices, circulars and reports to creditors, employees and shareholders (approximately 11 542 in total) by e-mail and by publication,



074-8
074-17

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on Comair's and on Sechaba Trust's website is in some instances is a requirement;

3.38 To collect any outstanding debts owing to Comair and to sell or compound any of these debts for such sum and on such terms and conditions as the applicants may in their sole discretion deem fit.

4 Authorising the applicants to approach this Court on the same papers, duly supplemented, for an order granting the applicants further powers should the need arise.



5 That the costs of this application be costs in the winding-up of Comair.

6 For such further and/or alternative relief as the Court may deem appropriate.

BY THE COURT


THE REGISTRAR



ADV KW LÜDERITZ SC
Counsel for the applicants
Cell: 082 4924459
Email: w luderitz@maisels.co.za

WERKSMANS ATTORNEYS
Attorneys for the applicants
Tel: 011 535 8160 / 082 404 9456
Email: avandermerwe@werksmans.com
Ref: A van der Merwe / SECH37698.24

074-9
074-18





IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO:

In the matter between:

CLOETE MURRAY N.O.

First Applicant

KGASHANE CHRISTOPHER MONYELA N.O.

Second Applicant

AHMED CARIM N.O.

Third Applicant

TRACY ANNE CAMERON N.O.

Fourth Applicant

BUHLE JEFFREY ERIC BUTHELEZI N.O.

Fifth Applicant

*[In their capacities as the Joint Provisional Liquidators
of Comair Limited (In Provisional Liquidation)]*

and

MR MUSA NSIBANDE N.O.

First Respondent

RAESIBE KEKANA N.O.

Second Respondent

LEANDA-MARSHA MTSHALI N.O.

Third Respondent

RICKIE RENNIE N.O.

Fourth Respondent

EMMANUEL MBUWE N.O.

Fifth Respondent

PATRICIA MANTSINA N.O.

Sixth Respondent

ANDRIES NTJANE N.O.

Seventh Respondent



M

THE AIR SERVICES LICENSING COUNCIL

Eighth Respondent

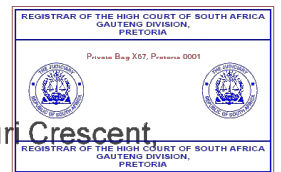
CONFIRMATORY AFFIDAVIT

I, the undersigned,

KGASHANE CHRISTOPHER MONYELA

do hereby make oath and say -

- 1 I am an insolvency practitioner of Masiye Administrators CC at 103 Liburi Crescent Savanna Country Estate, Mamelodi and PO Box 11460, Tramshed, 0126.
- 2 The facts contained herein are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
- 3 I am the second applicant in this application, and I am one of the joint provisional liquidators of Comair Limited (In Provisional Liquidation).
- 4 I have read the founding affidavit deposed to by **CLOETE MURRAY** and I confirm that I am in support of this application being instituted and I confirm the contents of his founding affidavit insofar as they relate to me.



KGASHANE CHRISTOPHER MONYELA

I certify that this affidavit was signed and sworn to before me at on this the _____ day of AUGUST 2022 by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words: 'I swear that the contents of this affidavit are both true and correct, so help me God.'

COMMISSIONER OF OATHS

Name:
Address:
Capacity:

10² M

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO:

In the matter between:

CLOETE MURRAY N.O.

First Applicant

KGASHANE CHRISTOPHER MONYELA N.O.

Second Applicant

AHMED CARIM N.O.

Third Applicant

TRACY ANNE CAMERON N.O.

Fourth Applicant

BUHLE JEFFREY ERIC BUTHELEZI N.O.

Fifth Applicant

*[In their capacities as the Joint Provisional Liquidators
of Comair Limited (In Provisional Liquidation)]*

and

MR MUSA NSIBANDE N.O.

First Respondent

RAESIBE KEKANA N.O.

Second Respondent

LEANDA-MARSHA MTSHALI N.O.

Third Respondent

RICKIE RENNIE N.O.

Fourth Respondent

EMMANUEL MBUWE N.O.

Fifth Respondent

PATRICIA MANTSINA N.O.

Sixth Respondent

ANDRIES NTJANE N.O.

Seventh Respondent



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THE AIR SERVICES LICENSING COUNCIL

Eighth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

AHMED CARIM

do hereby make oath and say -

- 1 I am an insolvency practitioner of MFO Carim Family Inv (Pty) Ltd at Mehren Street, Brooklyn, Pretoria and PO Box 19565, Pretoria West, 0017.
- 2 The facts contained herein are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
- 3 I am the third applicant in this application, and I am one of the joint provisional liquidators of Comair Limited (In Provisional Liquidation).
- 4 I have read the founding affidavit deposed to by **CLOETE MURRAY** and I confirm that I am in support of this application being instituted and I confirm the contents of his founding affidavit insofar as they relate to me.



AHMED CARIM

I certify that this affidavit was signed and sworn to before me at on this the _____ day of AUGUST 2022 by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words: 'I swear that the contents of this affidavit are both true and correct, so help me God.'

COMMISSIONER OF OATHS

Name:

Address:

Capacity:

M² *M*

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO:

In the matter between:

CLOETE MURRAY N.O.

First Applicant

KGASHANE CHRISTOPHER MONYELA N.O.

Second Applicant

AHMED CARIM N.O.

Third Applicant

TRACY ANNE CAMERON N.O.

Fourth Applicant

BUHLE JEFFREY ERIC BUTHELEZI N.O.

Fifth Applicant

*[In their capacities as the Joint Provisional Liquidators
of Comair Limited (In Provisional Liquidation)]*

and

MR MUSA NSIBANDE N.O.

First Respondent

RAESIBE KEKANA N.O.

Second Respondent

LEANDA-MARSHA MTSHALI N.O.

Third Respondent

RICKIE RENNIE N.O.

Fourth Respondent

EMMANUEL MBUWE N.O.

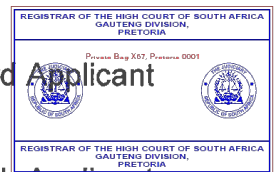
Fifth Respondent

PATRICIA MANTSINA N.O.

Sixth Respondent

ANDRIES NTJANE N.O.

Seventh Respondent



THE AIR SERVICES LICENSING COUNCIL

Eighth Respondent

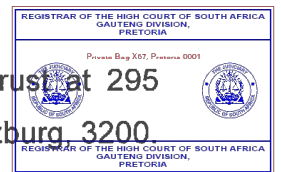
CONFIRMATORY AFFIDAVIT

I, the undersigned,

TRACY ANNE CAMERON

do hereby make oath and say -

- 1 I am an insolvency practitioner of Stowell Estate Administration Trust at 295 Pietermaritzburg Street, Pietermaritzburg and PO Box 33, Pietermaritzburg, 3200
- 2 The facts contained herein are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
- 3 I am the fourth applicant in this application, and I am one of the joint provisional liquidators of Comair Limited (In Provisional Liquidation).
- 4 I have read the founding affidavit deposed to by **CLOETE MURRAY** and I confirm that I am in support of this application being instituted and I confirm the contents of his founding affidavit insofar as they relate to me.



TRACY ANNE CAMERON

I certify that this affidavit was signed and sworn to before me at on this the _____ day of AUGUST 2022 by the deponent who acknowledged that she knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on her conscience and uttered the following words: 'I swear that the contents of this affidavit are both true and correct, so help me God.'

COMMISSIONER OF OATHS

Name:

Address:

Capacity:

16 2 4

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO:

In the matter between:

CLOETE MURRAY N.O.

First Applicant

KGASHANE CHRISTOPHER MONYELA N.O.

Second Applicant

AHMED CARIM N.O.

Third Applicant

TRACY ANNE CAMERON N.O.

Fourth Applicant

BUHLE JEFFREY ERIC BUTHELEZI N.O.

Fifth Applicant

*[In their capacities as the Joint Provisional Liquidators
of Comair Limited (In Provisional Liquidation)]*

and

MR MUSA NSIBANDE N.O.

First Respondent

RAESIBE KEKANA N.O.

Second Respondent

LEANDA-MARSHA MTSHALI N.O.

Third Respondent

RICKIE RENNIE N.O.

Fourth Respondent

EMMANUEL MBUWE N.O.

Fifth Respondent

PATRICIA MANTSINA N.O.

Sixth Respondent

ANDRIES NTJANE N.O.

Seventh Respondent



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THE AIR SERVICES LICENSING COUNCIL

Eighth Respondent

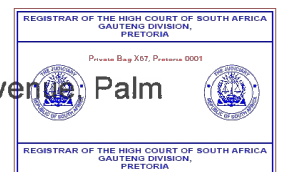
CONFIRMATORY AFFIDAVIT

I, the undersigned,

BUHLE JEFFREY ERIC BUTHELEZI

do hereby make oath and say -

- 1 I am an insolvency practitioner of Buthelezi Attorneys at 19 Teebos Avenue, Palm Ridge and PO Box 136602, Alberton North, 1456.
- 2 The facts contained herein are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
- 3 I am the fifth applicant in this application, and I am one of the joint provisional liquidators of Comair Limited (In Provisional Liquidation).
- 4 I have read the founding affidavit deposed to by **CLOETE MURRAY** and I confirm that I am in support of this application being instituted and I confirm the contents of his founding affidavit insofar as they relate to me.



BUHLE JEFFREY ERIC BUTHELEZI

I certify that this affidavit was signed and sworn to before me at on this the _____ day of AUGUST 2022 by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words: 'I swear that the contents of this affidavit are both true and correct, so help me God.'

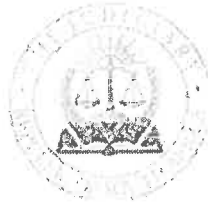
COMMISSIONER OF OATHS

Name:

Address:

Capacity:

10 2 11



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

CASE NO: 2022/20111

JOHANNESBURG, 14 June 2022

BEFORE THE HONOURABLE ACTING JUDGE SWANEPOEL

In the matter between:-

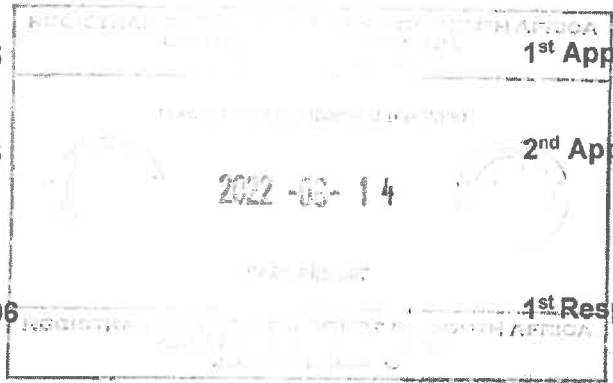
**RICHARD FERGUSON
ID NO. 660605 5024 085**

**NEIL HABLUTZEL
ID NO. 640313 5042 083**

and

**COMAIR LIMTIED
REG NO. 1967/006783/06**

**AFFECTED PERSON
(PER ANNEXURE A)**

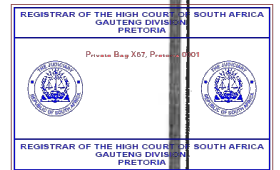


1st Applicant

2nd Applicant

1st Respondent

**2nd Respondent – 11543
Respondents**



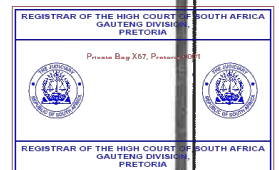
HAVING read the documents filed of record and having considered that matter:-

IT IS ORDERED THAT:-

1. The Applicants' failure to comply with the time limits and forms of service is condoned and this application was heard as a matter of urgency, in terms of Uniform Rule of Court 6 (12) (a); and
2. The First Respondent's business rescue be discontinued and that the First Respondent is provisionally wound up.
3. The Applicants are granted leave to cite the Second to eleven thousand five hundred and forty third Respondents collectively as a group.

[Handwritten initials and signatures]

- 4. A rule nisi is issued calling upon the First Respondent and all Affected Persons to show cause, if any, to the Court by **26th July 2022**, why:-
 - 4.1 the First Respondent should not be finally wound up; and
 - 4.2 the costs of this application, subject to 6 should not be costs in the winding-up;
- 5. Service of this Order is effected:-
 - 5.1 on the First Respondent by Sheriff at its registered address situate at 2 -4 Fortress Road, Rhodesfield, Kempton Park, Gauteng;
 - 5.2 on the Affected Persons identified in annexure by "A" to the founding affidavit by email;
 - 5.3 by publication on the First Respondent's website; and
 - 5.4 by one publication in the Business Day newspaper;
- 6. Any party/s who oppose the application for an order for final winding-up pay/s the costs occasioned by such opposition jointly and severally.



BY THE COURT

[Handwritten Signature]
 REGISTRAR
 /bbn



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20062018/COMA3742.18
FA_Conversion from BR to Lq/#7043465v4

2

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

074-16
26/7/22

CASE NO: 2022/20111

**BEFORE THE ACTING JUSTICE TODD
ON 26 JULY 2022
Matter 2 on the roll**

IN THE MATTER BETWEEN:

**MURRAY, CLOETE N.O
(ID No: 660326 5117 080)**

FIRST APPLICANT

**MONYELA, KGASHANE CHRISTOPHER N.O
(ID No:670528 5341 085)**

SECOND APPLICANT

**CARIM, AHMED N.O
(ID No:870630 5071 080)**

THIRD APPLICANT

**CAMERON, TRACY ANNE N.O
(ID No:[650512 0072 089)**

FOURTH APPLICANT

**BUTHELEZI, BUHLE JEFFREY ERIC
(ID No:[660822 5408 081)**

FIFTH APPLICANT

AND

**COMAIR LIMITED
(Registration Number: 1967/006783/06)**

FIRST RESPONDENT

AFFECTED PERSONS

**SECOND TO ELEVEN THOUSAND
FIVE HUNDRED AND FORTY
THIRD RESPONDENTS**

In re:

CASE NO: 2022/20111

**RICHARD FERGUSON N.O
(ID No:660605 5024 085)**

FIRST APPLICANT

**NEIL HABLUTZEL N.O
(ID No:640313 5042 083)**

SECOND APPLICANT

AND

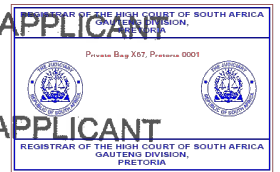
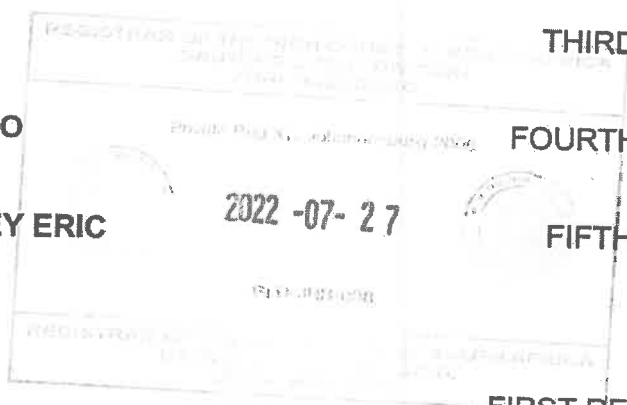
**COMAIR LIMITED
(Registration Number: 1967/006783/06)**

FIRST RESPONDENT

AFFECTED PERSONS

**SECOND TO ELEVEN THOUSAND
FIVE HUNDRED AND FORTY
THIRD RESPONDENTS**

074-16
re M



074-17

DRAFT ORDER

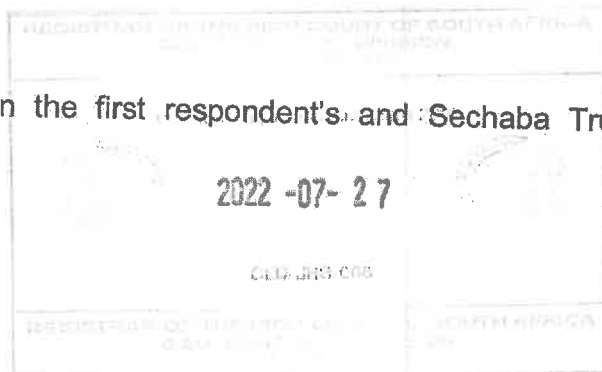
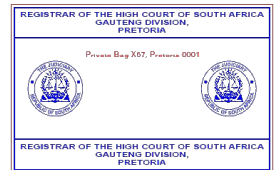
Having read the papers and heard argument, an order in the following terms is made:

1 that the return day of the rule *nisi* granted by this Court on **14 June 2022** under the above case number be extended to 13th DECEMBER 2022

2 that service of this order be effected:

2.1 on the second to second to eleven thousand five hundred and forty third respondents respondents by email; and

2.2 by publication on the first respondent's and Sechaba Trust's respective websites,



By order of this Court

The Registrar

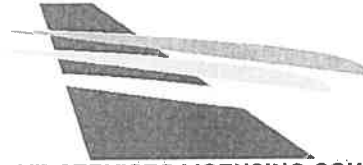
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074-17

2 of 2

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AIR SERVICES LICENSING COUNCIL
Private Bag x193, Pretoria, 0001
Forum Building, cor Struben and Bosman Streets, Pretoria

Comair Limited
Attention: Mr. Cloete Murray
2 – 4 Fortress Road
Rhodesfield
Kempton Park
1619

REF: Meeting #9 of 2022
RES NO: Council Resolution No.11/24/06/2022
ENQUIRIES: Ms Patricia Mantsina
TEL: (012) 309 3155
EMAIL: MantsinP@dot.gov.za
DATE: 12 July 2022

Transmitted via emailc.murray@sechaba.co.za



Dear Mr. Murray,

RE: FORMAL REQUEST TO APPEAR BEFORE THE AIR SERVICES LICENSING COUNCIL IN TERMS OF SECTION 16(3) READ TOGETHER WITH SECTION 20 OF THE AIR SERVICES LICENSING ACT OF 1990

1. Kindly receive our warm greetings.
2. The Air Services Licensing Council ("**Council**") held its ordinary council meeting on 24 June 2022 and at the said meeting resolved under Council Resolution No. 11/24/06/2022 that it suspects, on reasonable grounds, that Comair Limited ("**Comair**") has failed to comply with Section 20(1) of the Air Services Licensing Act. No. 115 of 1990 ("**Act**"), which warrants the suspension and/or cancellation of its existing license(s).
3. To this end, please be kindly advised that Council hereby extends an invitation to the duly appointed Liquidator(s) to appear before it in accordance with the provisions of Section 16(3) read together with Section 20(2) of the Act, for the purposes of addressing representations to it regarding the suspicions referred to in paragraph 2 above.
4. In accordance with the provisions of Section 24 of the Act, Council wishes for the Liquidator(s) to address it on the status of the airline and further instructs that the following documents be provided to it in 7 (seven) fold, within 7 (seven) calendar days of receipt of this letter, and hand delivered to the offices of the Council Secretariat, for the attention of Ms Patricia Mantsina:
 - 4.1. air service licenses;
 - 4.2. latest Consumer Guarantee;
 - 4.3. proof of actual operations for the past 12 (twelve) months;

AIR SERVICES LICENSING COUNCIL

Council Members:
Mr. Musa Nsibandek (Chairperson) | Ms Raesibe Kekana (Vice-Chairperson) | Mr. Rickie Rennie | Mr. Emmanuel Mbuwe | Ms Leanda-Marsha Mshali

Council Secretariat:
Ms Patricia Mantsina

Handwritten initials: "UP" and "M"

- 4.4. information pertaining to routes currently not being utilised and reasons for the failure to utilise same;
 - 4.5. prescribed statistical information for the past 12 (twelve) months;
 - 4.6. Air Operators Certificate (AOC);
 - 4.7. Operations specification (Opspec).
5. The aforementioned meeting shall be held in person and is scheduled as follows:

Date: Wednesday, 03 August 2022
Venue: National Department of Transport
Forum Building
Corner Struben and Bosman Streets
Pretoria
0001
Time: 11:15am – 12:15pm

We trust that you find the contents of this letter to be in order and we look forward to your cooperation in this regard.



Yours sincerely,

1

Mr. Musa Nsibande
Air Services Licensing Council
Chairperson

Ms Patricia Mantsina
Air Services Licensing Council
Council Secretariat

CC:

Ms Raesibe Kekana
Vice-Chairperson

Mr. Rickie Rennie
Council Member

Ms Leanda-Marsha Mtshali
Council Member

Mr. Emmanuel Mbuwe
Council Member

Ms Elizabeth Mpye
Chief Director: Aviation

Mr. Andries Ntjane
Deputy Director: Licensing & Permits

AIR SERVICES LICENSING COUNCIL

Council Members:
Mr. Musa Nsibande (Chairperson) | Ms Raesibe Kekana (Vice-Chairperson) | Mr. Rickie Rennie | Mr. Emmanuel Mbuwe | Ms Leanda-Marsha Mtshali

Council Secretariat:
Ms Patricia Mantsina

2-4 Fortress Road, Rhodesfield,
Kempton Park, 1619
P.O. Bcx 7015, Bonaero Park,
South Africa, 1622

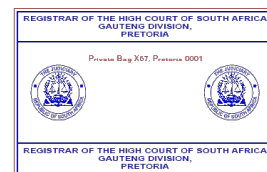
Tel: +27 11 921 0111
www.comair.co.za

TO: AIR SERVICE LICENSING COUNCIL
BY: EMAIL: mantsinP@dot.gov.za

15 July 2022

OUR REF : C Murray (cmurray@sechaba.co.za);
YOUR REF : MEETING #9 OF 2022 / COUNCIL RESOLUTION NO: 11/24/06/2022

Dear Sir/Madam



COMAIR LIMITED (IN PROVISIONAL LIQUIDATION)

We refer to your letter dated the 12th of July 2022. We confirm that Mr Cloete Murray hereby accepts the invitation and will attend the meeting.

We trust you find this to be in order.

Yours faithfully

C Murray

CLOETE MURRAY

OBO PROVISIONAL CO-LIQUIDATORS

Provisional Liquidators: C Murray, KC Monyela, A Carim, TA Cameron, BJE Buthelezi
Master's Ref: G613/222

Handwritten initials: 10 and M

2-4 Fortress Road, Rhodesfield,
Empton Park 1619
P.O. Box 7015, Bonaero Park,
Johannesburg 1622

Tel: +27 11 921 0111
A COMAIR COMPANY

28 July 2022

Forum Building
Corner Struben and Bosman Streets
Pretoria
0001
Offices of the Council Secretariat
Attention Ms. Patricia Mantsina

Dear Madam



RE: FORMAL REQUEST TO APPEAR BEFORE THE AIR SERVICES LICENSING COUNCIL IN TERMS OF SECTION 16(3) READ TOGETHER WITH SECTION 20 OF THE AIR SERVICES LICENSING ACT OF 1990

We refer to the above-mentioned letter with REF: Meeting #9 of 2022 and Res No: Council Resolution No. 11/24/06/2022, the submission of the following requested documentation:

- 1-Air service licenses
- 2-Latest Consumer Guarantee
- 3-Proof of actual operations in the past 12 months
- 4-Information pertaining to routes currently not being utilised and reasons for the failure to utilise same
- 5-Air operations certificate (AOC)
- 6-Operations specification (Opspec)

Kind regards

Ryan Van Wijk
M: 0613482655
E: ryan.vanwijk@comair.co.za

001

kulula.com

BRITISH AIRWAYS

Comair ✿ Travel

corporatedirect

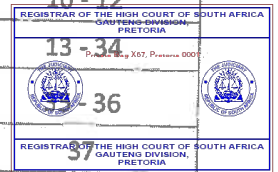
Comair Training Centre

1000 Cross Road (Montefield),
 Westgate Park 1619
 4000 Westgate, Botswana Park,
 Johannesburg 1622

011 431 1111
 www.comair.co.za

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RECORD OF NOTES

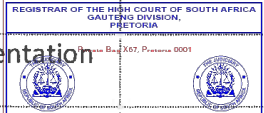

MEETING WITH THE AIR SERVICE LICENCING COUNCIL

Wednesday, 03 August 2022

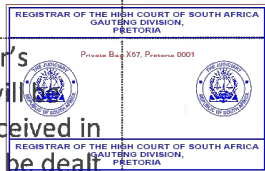
The meeting commenced at 11h55 at the offices of
The Air Services Licencing Council, situated in Pretoria.

Attendance list – not signed.

LIQUIDATORS	AIR SERVICES LICENSING COUNCIL	
Cloete Murray (CM)	Musi Nsibande (MN)	Rickie Rennie (RR)
Caroline Pelsler (CP)	Patricia Mantsina (PM)	Raesibe Kekana (RK)
Ryan van Wijk (RvW)	Leanda-Marsha Mtshali (LMM)	Elizabeth Mpye (EM)

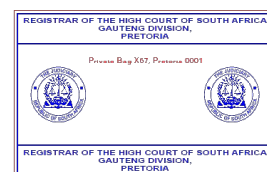
	WELCOME	
RR	Council questioned Liquidators' Resolution to engage. Any binding resolution documentation to present to Council? Authorised to do so?	
CM	CM confirmed that Comair is in provisional liquidation. The Master of the High Court has appointed us as Liquidators. CM here to act with authority of all co-liquidators to act and to represent them on all proceedings. R van Wijk assisting on consulting basis in the process. CM can confirm that CM is fully authorised.	
LeeAnn	Newly appointed Council. Previous Council not operational for 18 months. Minister appointed Council on 14 March 2022. Commenced 1 st meeting on 6 April 2022, there after tasked with undertaking all regulatory aspects, inclusive looking into existing licence holders and activities. Council directed letter to Liquidator ito Section 20 of the Act and requested a meeting ito Section 16 - Section 3 of the Act, due to suspicion on part of Council that Comair Ltd, at time did not utilise licences. If not utilised, it warrants the suspension of licence.	
	Council heard in media that Comair is either in business rescue and/or liquidation. Invited Comair to a meeting on 18 May. Officials present at meeting undertook in light of an amendment application to Council dated back to 2019. Then subsequently received letter 1 June that Comair suspended its operations. Since 1 June, up to Council's letter not received - any communication from Comair, BRP or liquidator thus Council unaware.	
	Questions to Liquidator:	
	1. What is the official status of Comair on 3 August? Is it placed on record? When decision resolved to commence, who appointed liquidators.	
	2. If it is provisional/final liquidation can Council have sight of certificate of appointment of Liquidator/s and them commence meeting on that basis. Fact that council hear from Media as an important stakeholder about the liquidation and/or business rescue is alarming this is council that issue licences.	
CM	Status: There was a business rescue process that commenced in April 2020 – as liquidators we had no role in that. Sometime in June this year, the Practitioners resolved to convert business rescue proceedings to a liquidation. Order granted on 14 July 2022. CM in response of letter sent to us by Kirsten King sent to Council a copy of the Certificate of Appointment and copy of provisional order. CM will re-direct if Council has not received. We were appointed in July – after the date of Council letter and since taken charge of Comair as an entity, keep in mind that the Board members of Comair by virtue of the statutes their authority to act on behalf of Comair is suspended and Liquidators are the only parties that can act.	
	The return date of the provisional order was 26 July and on the application of the provisional liquidators, that return date was extended to 13 December.	

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	CM will send copies of the Certificate of appointment, provisional liquidation order and a copy of the extension order. CM accepted documents are not in front of this meeting.	CM
MS	Raised issue around Consumer Guarantees. Public Service Commission enquires what status of payments are to people that bought tickets. How will people be refunded?	
CM	Whatever happened before Liquidators' appointment, is out of their control. We had no input in any discussion with Council before – have no idea what interaction was between Practitioners and Council – understanding there was none. Ticketing issue: By far the most people that bought tickets from Comair, did so with their credit cards and ito an arrangement between banks and various issuers of credit cards has been dealt with in a charge back system – so they have been refunded - ± 95%. The remaining who bought via payments to travel agents or by direct electronic funds through Comair are being accommodated in a process where they are registered as ticket holders in the Comair liquidation proceedings, ultimately they will form part of claims process. Have set up a designated ticket holders' website – ticketholders.comair.co.za . Point is this relates to small % of people. Bulk of people refunded.	
Council	Liquidators to send a breakdown of how many customers bought tickets prior to liquidation processes, from 18 May to 01 June as well as outstanding refunds. Council wants to know the process for prioritising of refunds.	
CM	CM will provide a full explanation of outstanding tickets as from 31 May when Comair's operations ceased. CM will also provide refunds on charge back system - how they will be dealt with during the process. From legal point of view – monies would have been received in business rescue period and that would have fall ticket holders' preference – they will be dealt with differently. CM will provide explanatory notes on how to deal	
LeeAnn	When provisional order was granted, why did it not trigger a process to liaise with the Council? Council is an affected party,	
CM	In liquidation proceedings, we don't have the term affected persons. We engaged with you keep in mind letter sent before we formally appointment – engagement immediately – period before our appointment = granting order and our appointment – could not act as liquidators as we did not have certificate – Liquidators got certificate on 14 July- after letter – legally could not respond without certificate.	
CM	CM responds to Lee Ann that he does not regard Council as an affected party – Council is not only interested party, you are the Regulator – the most important part between the other Regulators that regulate this space – not meant as disrespect – we understood fully the importance of having a proper relationship with this Council and other Regulators.	
LeeAnn	To be noted: There was a process before liquidation and a process after liquidation (1 June). Conduct of comments has been in bad faith to Council: <ol style="list-style-type: none"> 1. Comair was invited by Council to make presentations on their current status. 2. Council must rectify various shortcomings and/or non-compliance identified by Council 3. On 1st June received letter from King to state the business has suspended operations and they will communicate to Council. There has been no communication as yet! Bear in mind - there are consumers which Council is responsible for - not only to licence holders but also dual responsibility to consumers and when a Board of Directors breaches the Council fails to get back not taking responsibility and accountability to start with a legal process – not what the legislation has in mind wrt to insolvency act. Irresponsible not to communicate the decisions that had been made. It is responsibility of licence holder to communicate all changes.	
CM	Going forward, CM undertakes, as liquidator and on behalf of other to keep council up to date on steps and in this process. Can't take responsibility what happened before was not part of that was advised there was an engagement that person not retained his services – have kept skeleton staff not part of the team. Agree and take point CM agree full disclosure and update	



	CM make sure all document will be sent and new meeting date will be set up. In meantime if something happens, will be communicate to you on basis we are keeping you in loop of respective outcomes.	
	Meeting aduorned 12h25 Will communicate on basis of communication.	
	Secretariat mouth piece – work through secretariat. Thank you for time	



Handwritten initials or marks, possibly '14' and 'M'.

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO:

In the matter between:

CLOETE MURRAY N.O.

First Applicant

KGASHANE CHRISTOPHER MONYELA N.O.

Second Applicant

AHMED CARIM N.O.

Third Applicant

TRACY ANNE CAMERON N.O.

Fourth Applicant

BUHLE JEFFREY ERIC BUTHELEZI N.O.

Fifth Applicant

*[In their capacities as the Joint Provisional Liquidators
of Comair Limited (In Provisional Liquidation)]*

and

MR MUSA NSIBANDE N.O.

First Respondent

RAESIBE KEKANA N.O.

Second Respondent

LEANDA-MARSHA MTSHALI N.O.

Third Respondent

RICKIE RENNIE N.O.

Fourth Respondent

EMMANUEL MBUWE N.O.

Fifth Respondent

PATRICIA MANTSINA N.O.

Sixth Respondent

ANDRIES NTJANE N.O.

Seventh Respondent



me

M

THE AIR SERVICES LICENSING COUNCIL

Eighth Respondent

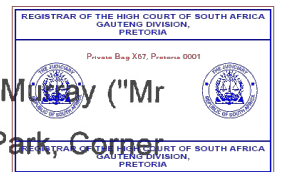
CONFIRMATORY AFFIDAVIT

I, the undersigned,

CAROLINE PELSER

do hereby make oath and say -

- 1 I am a major female employed as a Personal Assistant by Mr Cloete Murray ("Mr Murray") of Sechaba Trust (Pty) Ltd at Unit G03, Lady Brooks Office Park, Corner of Brooklyn and Justice Mahomed Streets, Menlo Park, Pretoria.
- 2 The facts contained herein are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
- 3 I have read the founding affidavit deposed to by **CLOETE MURRAY** and I confirm the contents of the affidavit insofar as they relate to me.



CAROLINE PELSER

I certify that this affidavit was signed and sworn to before me at on this the _____ day of AUGUST 2022 by the deponent who acknowledged that she knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on her conscience and uttered the following words: 'I swear that the contents of this affidavit are both true and correct, so help me God.'

COMMISSIONER OF OATHS

Name:

Address:

Capacity:

4 2 M



AIR SERVICES LICENSING COUNCIL
Private Bag x193, Pretoria, 0001
Forum Building, cor Struben and Bosman Streets, Pretoria

Comair Limited
Attention: Mr. Cloete Murray
2 – 4 Fortress Road
Rhodesfield
Kempton Park
1619

REF: Meeting #14 of 2022
RES NO: Council Resolution No.01/03/08/2022
ENQUIRIES: Ms Patricia Mantsina
TEL: (012) 309 3155
EMAIL: MantsinaP@dot.gov.za
DATE: 3 August 2022



Transmitted via email

Dear Mr. Murray,

RE: SUSPENSION OF THE AIR SERVICES LICENCES ISSUED TO COMAIR LIMITED BY THE AIR SERVICES LICENSING COUNCIL IN TERMS OF SECTION 20(1)(b) OF THE AIR SERVICES LICENSING ACT NO.115 OF 1990

1. Kindly receive our warm greetings.
2. Our meeting held today, 3 August 2022 refers, wherein the Air Services Licensing Council ("Council") invited you in terms of Council Resolution No. 11/24/06/2022. Council had suspected, on reasonable grounds, that Comair Limited trading as Kulula.Com and British Airways ("Comair") had failed to comply with Section 20(1) of the Air Services Licensing Act. No. 115 of 1990 ("Act"), which warranted the suspension and/or cancellation of your existing licence(s).
3. You duly accepted our invitation and accordingly addressed Council with representations regarding the suspicions referred to in paragraph 2 above. Council was advised that Comair on 14 June 2022 was placed under provisional liquidation and in a court order dated 26 July 2022, the return date was extended to 13 December 2022, all of which is in direct violation of the provisions of Section 19(d) of the Act, thus warranting the immediate suspension of your air service licences.
4. To this end, please be kindly advised that in accordance with the provisions of Section 20(1)(b) of the Act, your licences, the details of which are set out below, be and are hereby **suspended for a period of 2 (two) years, effective immediately:**

4.1. Licence Number: N067D;

4.2. Licence Number: S066D.

AIR SERVICES LICENSING COUNCIL

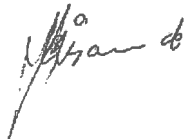
Council Members:
Mr. Musa Nsiibande (Chairperson) | Ms Raeslbe Kekana (Vice-Chairperson) | Mr. Rickie Rennte | Mr. Emmanuel Mbuwe | Ms Leanda-Marsha Mtshali

Council Secretariat:
Ms Patricia Mantsina

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5. We trust that you find the contents of this letter to be in order.

Yours sincerely,



Mr. Musa Nsibandé
Air Services Licensing Council
Chairperson




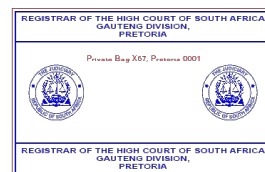
Ms Raesibe Kekana
Air Services Licensing Council
Vice-Chairperson



Ms Leanda-Marsha Mtshali
Council Member



Mr. Rickie Rennie
Council Member



Mr. Emmanuel Mbuwe
Council Member

AIR SERVICES LICENSING COUNCIL

Council Members:
Mr. Musa Nsibandé (Chairperson) | Ms Raesibe Kekana (Vice-Chairperson) | Mr. Rickie Rennie | Mr. Emmanuel Mbuwe | Ms Leanda-Marsha Mtshali

Council Secretariat:
Ms Patricia Mentsina



2-4 Fortress Road, Rhodesfield,
Kempton Park, 1619
P.O. Box 7015, Bonaero Park,
South Africa, 1622

Tel: +27 11 921 0111
www.comair.co.za

The Chairperson
AIR SERVICE LICENSING COUNCIL
c/o The Department of Transport
The Forum Building
Cnr Bosman and Struben Streets
Pretoria
Attention: Ms Patricia Mantsina (MantsinP@dot.gov.za)

OUR REF : C Murray (cmurray@sechaba.co.za)

YOUR REF :

Dear Sir/Madam

5 August 2022



COMAIR LIMITED (IN PROVISIONAL LIQUIDATION)

We refer to our meeting of 3 August 2002, during which meeting we undertook to provide you with certain information regarding the liquidation process of Comair Ltd (in provisional liquidation). In this regard, we attach herewith the following information and/or documents:

1. Court order dated 14 June 2022 in terms of which the company was placed in provisional liquidation.
2. Court order dated 26 July 2022 in terms of which the return date was extended to 13 December 2022.
3. Certificate of Appointment dated 23 June 2022 confirming the appointees in this matter.

We have requested the attorneys of record to provide your office with a full set of the application and extension papers which set out the basis for the granting of the provisional liquidation order by the erstwhile business rescue practitioners and the basis for the extension of the provisional order.

We are in the process of extracting the relevant information concerning the outstanding ticketholders and hope to provide you with the information soon. We will also, as part of that submission, provide you with the details of how we intend dealing with the outstanding tickers holders as part of the liquidation process.

You are more than welcome to contact us, should you require any additional information. We trust you find this to be in order.

Yours faithfully

C Murray
CLOETE MURRAY
OBO PROVISIONAL CO-LIQUIDATORS

Provisional Liquidators: C Murray, KC Monyela, A Carim, TA Cameron, BJE Buthelezi
Master's Ref: G613/222



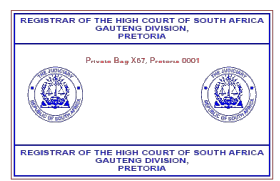
DELIVERED BY HAND AND BY EMAIL

Air Services Licensing Council
Forum Building
Corner Struben and Bosman Streets
Pretoria

Attention: Ms Patricia Mantsina
Email: MantsinP@dot.gov.za

Johannesburg Office
The Central
96 Rivonia Road
Sandton 2196 South Africa
Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
Fax +27 11 535 8600
www.werksmans.com

YOUR REFERENCE: Meeting # 14 of 2022 council resolution 01/03/08/2022
OUR REFERENCE: Mrs L Silberman/le/SECH37698.24/#8764008v1
DIRECT PHONE: +27 11 535 8134
DIRECT FAX: +27 11 535 8734
EMAIL ADDRESS: lsilberman@werksmans.com



12 August 2022

Dear Sirs

SUSPENSION OF THE AIR SERVICES LICENCE ISSUED TO COMAIR LIMITED ("Comair") BY THE AIR SERVICES LICENSING COUNCIL IN TERMS OF SECTION 20(1)(b) OF THE AIR SERVICES LICENSING ACT NO 115 OF 1990

- 1 We act on behalf of the joint provisional liquidators of Comair Limited (In Provisional Liquidation) ("our client").
- 2 Our client has handed to us your letter dated 3 August 2022 in terms of which it is stated that -
 - 2.1 in accordance with the provisions of s20(1)(b) of Act 115 of 1990 ("the Act"), Comair's licences NO 67D and SO66D, are suspended for two years; and
 - 2.2 the ground provided for the above suspension of Comair's licences is the provisional liquidation of Comair, which is in violation of s19(1)(d) of the Act.
- 3 Our client does not accept the suspension of Comair's licences on the above grounds or at all.
- 4 Section 19(1)(d) provides that a licence is issued on condition that it shall lapse as soon as the estate of the licensee is sequestrated or wound-up.
- 5 There is no definition of "sequestration" or "winding-up" or any references to the Insolvency or Companies Legislation in the Act.

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
Directors D Hertz (Chairman) OL Abraham LK Alexander C Andropoulos JKOF Antunes RL Armstrong DA Arteiro K Badal T Beta LM Becker JD Behr AR Berman NMN Bhengu HGB Boshoff TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan JN de Villiers R Driman KJ Fyfe D Gewer JA Gobetz R Gootkin GF Griessel N Harduth J Hollesen MGH Honiball BB Holz T Inno HC Jacobs TL Janse van Rensburg AV Jara G Johannes S July J Kallmeyer A Kenny R Killoran N Kirby HA Kotze S Krige PJ Krusche H Laskov P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso DD Magidson MPC Manaka JE Mardon NT Matshebela JE Meiring H Michael SM Moerane C Moraitis PM Mosebo NPA Motsiri L Naidoo K Neluheni JJ Nlemand BV Ntuli BPF Olivier WE Oosthuizen Z Oosthuizen S Padayachy M Pansegrouw S Passmoor D Pisanii T Potter AA Pyzikowski RJ Raath A Ramdhan MDF Rodrigues BR Roothman W Rosenberg NL Scott TA Sibidla FT Sikhavhakhavha LK Silberman S Sinden DE Singo JA Smit BM Sono CI Stevens PO Steyn J Stockwell DH Swart JG Theron PW Tindle SA Tom JJ Truter KJ Trudgeon M Tyfield DN van den Berg AA van der Merwe JJ van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield L Watson D Weglerski G Wickins M Wiehahn DC Willans DG Williams E Wood BW Workman-Davies Consultant DH Rabin

JOHANNESBURG • CAPE TOWN • STELLENBOSCH



- 6 Accordingly we refer you to the case authority of *Engelbrecht N.O. and Others v Zuma and Others 2015 (3) All SA 590 GP*.
- 7 Furthermore even if it is contended that Comair has been liquidated as envisaged in section 19(1)(d), which it is denied, the suspension itself is flawed. If a licence lapses on a sequestration or liquidation of the licensee, it begs the question how the licences can then be suspended. In other words, if it is alleged that Comair's licences have lapsed by virtue of the operation of section 19(1)(d) of the Act (this too is denied) then the licenses cannot be suspended. One cannot suspend something that has already lapsed.
- 8 The above said and as Comair is compliant in all respects with the other requirements pertaining to its licences, as was demonstrated by our client at the meeting held with your representatives [at which you did not take issue with or indicate that the council intended to suspend the licences on the basis of the company being in provisional liquidation and in terms of section 19(1) (d)] and thereafter in the documentation provided to you, we request that you provide a retraction / withdrawal of the suspension of the licences as there is no lawful basis therefore.
- 9 Bearing in mind the severe implications of the suspension of Comair Limited's licences, we have been instructed to request that the retraction / withdrawal of the suspension be provided by no later than 17:00 on Thursday 18 August 2022, and that pending the foregoing, no action will be taken by you to compromise or prejudice the licences in any respect.
- 10 All our client's rights are reserved.



Yours faithfully

Werksmans Inc

Received on this the day of AUGUST 2022

15/08/22 T.M. NKOSI

For: AIR SERVICES LICENSING COUNCIL

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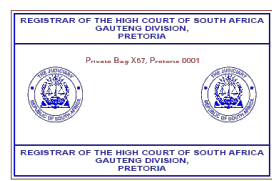


Private Bag X193,
Pretoria, 001
Forum Building
Cnr Struben & Bosman Streets
Pretoria

Werksmans Attorneys
Attention: Mrs L Silberman
Johannesburg Office
The Central
96 Rivonia Road
Sandton
2196

REF: Special Meeting #5 of 2022
RES NO: Council Res No. 01/14/08/2022
ENQUIRIES: Ms Patricia Mantsina
TEL: (012) 309 3155
EMAIL: MantsinP@dot.gov.za
DATE: 18 August 2022

Your Ref: Mrs L Silberman/le/SECH37698.24/#8764008v1
Transmitted via email: lsilberman@werksmans.com



Dear Mrs Silberman,

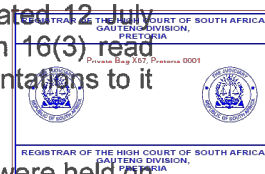
RE: SUSPENSION OF THE AIR SERVICES LICENCES ISSUED TO COMAIR LIMITED BY THE AIR SERVICES LICENSING COUNCIL IN TERMS OF SECTION 20(1)(b) OF THE AIR SERVICES LICENSING ACT NO.115 OF 1990

1. Your letter of demand dated 12 August refers.
2. The Air Services Licensing Council ("**Council**") does not intend to deal with each and every allegation contained in your letter under reply at this time, but we reserve the right to do so in the future, should it become necessary. Furthermore, our failure to deal specifically with any allegation does not constitute an admission as to the correctness thereof.
3. Whilst Council is not compelled to respond to your letter under reply within the time period indicated by you, which time period it deems to be unreasonable in the circumstances, Council is nonetheless addressing this letter to you as a matter of courtesy and in the spirit of co-operation. Council is further of the opinion that it is important at the outset that it brings the following information to your attention:
 - 3.1. Council's key role is to administer, monitor and enforce regulation in domestic air operations/services in the Republic of South Africa ("**South Africa**") inclusive of the safe operation of South African aircrafts in our domestic airspace. Council is consequently entrusted with issuing licences, certificates, authorisations, approvals and other permissions required by persons undertaking aviation-related activities under domestic aviation legislation, and is duly mandated in this regard in terms of the Air Services Licensing Act No.115 of 1990 ("**Act**");
 - 3.2. In undertaking the aforementioned legislative duty, Council is required to analyse the applicable data to determine appropriate interventions to maintain and improve our domestic aviation licensing regime, safety in all aviation operations coupled with compliance to legislative prescripts. This therefore requires that all actions undertaken by Council must be proportionate to the regulatory risk being managed;

Council Members:
Mr. Musa Nsibandze (Chairperson) - Ms Sharon Kekana (Vice-Chairperson)
Mr. Rickie Rennie (Council Member) - Ms Leanda-Marsha Mtshali (Council Member)
Mr. Emmanuel Mbuwe (Council Member)

Council Secretariat:
Ms Patricia Mantsina (Secretary of Council)
Mr. Andries Ntjane (Deputy-Director: Licensing & Permits)

- 3.3. Therefore, our mission is to promote a positive and collaborative culture through a fair, effective and efficient domestic aviation regulatory system whilst supporting the country's aviation community. In keeping with our fundamental obligations, Council strives to ensure at all times that our decision-making and actions are lawful, fair, reasonable and consistent, whilst not unnecessarily impeding the efficiency of the operations that we regulate;
- 3.4. Thus, transparent external accountability processes encouraging procedural fairness, accessibility and responsiveness that builds public trust and confidence in the performance of our regulatory functions are catered for in our empowering legislation.
4. Council at its meeting of 24 June 2022 had resolved under Council Resolution No. 11/24/06/2022 that it suspects, on reasonable grounds, that your Client had failed to comply with the provisions of the Act, which warranted the suspension and/or cancellation of its existing license(s) in accordance with Section 20(1) of the Act.
5. In accordance with the provisions of Section 24 of the Act, Council humbly requested your Client to address it on the status of the airline and further instructed that various documentation be provided to it. Your client was further invited in a letter dated 12 July 2022 to appear before Council in accordance with the provisions of Section 16(3) read together with Section 20(2) of the Act, for the purposes of addressing representations to it regarding the suspicions aforementioned.
6. Upon your client concluding its representations to Council, which proceedings were held on 3 August 2022, coupled with Council's assessment of the documentation provided to it, Council ascertained gross non-compliance with the Act, the Domestic Regulations 1991 and the respective licence conditions, all of which warranted the suspension of the licences concerned and the said suspension was duly communicated to your client.
7. Your Client is, with respect, reminded that the **suspension for Licence Number: N067D and Licence Number: S066D, for a period of 2 (two) years remains**. Council wishes to reiterate and place on record that upon a diligent reading of the provisions of the Act and the Domestic Regulations 1991, you will note that a remedial procedure is provided for those who are aggrieved by the decisions of Council resolved in accordance with Section 20(1)(b) of the Act.
8. Council wishes to further place on record that it's not its intention to litigate through correspondence and our rights remain strictly reserved.



We trust that you find the contents of this letter to be in order.

Yours sincerely,
AIR SERVICES LICENSING COUNCIL

Per:

Mr. Musa Nsibandé
Chairperson

Ms Raesibe Kekana
Vice-Chairperson

Council Members:

Mr. Musa Nsibandé (Chairperson) - Ms Sharon Kekana (Vice-Chairperson)
Mr. Rickie Rennle (Council Member) - Ms Leanda-Marsha Mtshali (Council Member)
Mr. Emmanuel Mbuwe (Council Member)

Council Secretariat:

Ms Patricia Mantsina (Secretary of Council)
Mr. Andries Ntjane (Deputy-Director: Licensing & Permits)

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Ms Leanda-Marsha Mtshali
Council Member

Mr. Rickie Rennie
Council Member

Mr. Emmanuel Mbuwe
Council Member

CC:

Mr. Ngwako Makaepa
Acting Director General: Transport

Mr. Zakhele Thwala
Deputy-Director General: Aviation

Ms Elizabeth Mpye
Chief Director: Aviation

Advocate Adam Masombuka
Head: Legal Department

Mr. Andries Ntjane
Deputy Director: Licensing & Permits

Mr. Sifiso Simelane
Director: Corporate Legal



Council Members:

Mr. Musa Nsibande (Chairperson) - Ms Sharon Kekana (Vice-Chairperson)
Mr. Rickie Rennie (Council Member) - Ms Leanda-Marsha Mtshali (Council Member)
Mr. Emmanuel Mbuwe (Council Member)

Council Secretariat:

Ms Patricia Mantsina (Secretary of Council)
Mr. Andries Ntjane (Deputy-Director: Licensing & Permits)

DELIVERED BY HAND AND BY EMAIL

Air Services Licensing Council
Forum Building
Corner Struben and Bosman Streets
Pretoria

Attention: Ms Patricia Mantsina
Email: MantsinP@dot.gov.za

Johannesburg Office
The Central
96 Rivonia Road
Sandton 2196 South Africa
Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
Fax +27 11 535 8600
www.werksmans.com

YOUR REFERENCE: Special Meeting # 5 of 2022 Council Res No. 01/14/08/2022
OUR REFERENCE: Mrs L Silberman/le/SECH37698.24/#8787639v1
DIRECT PHONE: +27 11 535 8134
DIRECT FAX: +27 11 535 8734
EMAIL ADDRESS: lsilberman@werksmans.com



22 August 2022

Dear Sirs

SUSPENSION OF THE AIR SERVICES LICENCE ISSUED TO COMAIR LIMITED ("Comair") BY THE AIR SERVICES LICENSING COUNCIL IN TERMS OF SECTION 20(1)(b) OF THE AIR SERVICES LICENSING ACT NO 115 OF 1990

- 1 We refer to the above matter and to your letter dated 18 August 2022.
- 2 The reasons provided in your letter under reply for the suspension of the licence numbers: NO67D and SO660, differ to those provided in your previous correspondence. This is unlawful and impermissible.
- 3 We do not intend to deal with the remaining allegations in your correspondence under reply and our failure to do so is not to be construed to be an admission of same. Our client's rights to deal with the said allegations at the appropriate time and in the appropriate forum remain strictly reserved together with all our client's other rights.

Yours faithfully

Werksmans Inc

Received on this the _____ day of AUGUST 2022. _____ For: AIR LICENSING COUNCIL
--

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
 Directors D Hertz (Chairman) OL Abraham LK Alexander C Andropoulos JKOF Antunes RL Armstrong DA Arteiro K Badal T Bata LM Becker JD Behr AR Berman NMN Bhengu
 HGB Boshoff TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan JN de Villiers R Driman KJ Fyfe D Gewer JA Gobetz R Gootkin
 GF Griessel N Harduth J Hollesen MGH Honiball BB Hotz T Inno HC Jacobs TL Janse van Rensburg AV Jara G Johannes S July J Kallmeyer A Kenny R Killoran N Kirby HA Kotze
 S Krige PJ Krusche H Laskov P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso DD Magidson MPC Manaka JE Mardon NT Matshebela
 JE Meiring H Michael SM Moerane C Moraitis PM Mosebo NPA Motsiri L Naidoo K Neluheni JJ Niemand BW Ntuli BPF Olivier WE Oosthuizen Z Oosthuizen S Padayachy
 M Pansegrouw S Passmoor D Pisanti T Potter AA Pyzikowski RJ Raath A Ramdhan MDF Rodrigues BR Roothman W Rosenberg NL Scott TA Sibidla FT Sikhavhakhavha
 LK Silberman S Sinden DE Singo JA Smit BM Sono CI Stevens PO Steyn J Stockwell DH Swart JG Theron PW Tindle SA Tom JJ Truter KJ Trudgeon M Tyfield DN van der Berg
 AA van der Merwe JJ van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield L Watson D Wegierski G Wickins M Wiehahn DC Willans DG Williams E Wood
 BW Workman-Davies Consultant DH Rabin

INVITATION TO SUBMIT OFFERS

OFFERS ARE HEREBY INVITED FOR THE PURCHASE OF LOTS 1 to 10 ("the Lots") AS DEFINED IN THE DATA ROOM COMAIR LIMITED, REGISTRATION NUMBER 1967/006783/06 (IN PROVISIONAL LIQUIDATION)

Seller: KGASHANE CHRISTOPER MONYELA N.O., AHED CARIM N.O., TRACY ANNE CAMERON N.O., BUHLE JEFFREY ERIC BUTHELEZI N.O. AND CLOETE MURRAY N.O. in their capacities as joint provisional liquidators of COMAIR LIMITED, registration number 1967/006783/06 (in provisional liquidation).

Telephone number: 012 340 0093

Physical address: Care of Sechaba Trust (Pty) Ltd, Unit G03, Lady Brooks Office Park, No. 14, 12th Street, Menlo Park, Pretoria

Email address: cmurray@sechaba.co.za / legal2@sechaba.co.za



(hereinafter referred to as "the Seller")

The Seller, in accordance with this Invitation and a Court Order issued in terms of section 386(5) of the 1973 Companies Act, as read with Item 9 of Schedule 5 of the 2008 Companies Act, hereby invites offers for the Lots. This non binding invitation ("Invitation") is addressed to interested parties ("Offerors") who intend making an offer ("Offer") to acquire the Lots individually or in any particular combination.

1 BACKGROUND

It is recorded that:

- 1.1 the Seller is the owner of the Lots and the lawful owners of the assets described in the Lots and has been authorised by an Order of Court in terms of section 386(5) of the 1973 Companies Act, as read with Item 9 of Schedule 5 of the 2008 Companies Act, to sell the "Enterprise" (comprising jointly or severally of the various Lots on Offer.
- 1.2 the Seller is desirous of selling the Lots.

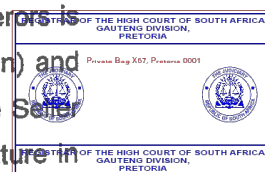
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1.3 the Offeror will be entitled, prior to Offer submission, to conduct a due diligence investigation in respect of the Lots, including but not limited to the shares, immovable properties, aircraft, assets and intellectual property and other matters relating to the Lots.

1.4 **Disclaimer- Data Room**

1.4.1 The information contained in the Data Room established for the purpose of disposing of the Lots and the conduct of a due diligence by the Offeror is as provided to the Seller by Comair Limited (in provisional liquidation) and while every care has been taken in preparing these documents, the Seller makes no representations and gives no warranties of whatever nature in respect of these documents, including but not limited to the accuracy or completeness of any information, facts and/or opinions contained therein, and the Seller will not be liable for any damage or loss, direct or indirect, occasioned by the use of the information.



1.4.2 The information should not be relied upon or used without the Offeror first confirming the accuracy thereof and no rights or obligations, whether contractual, delictual, or other, shall arise as a result of the information contained therein.

2 **CLOSING DATE AND METHOD OF SUBMISSION OF OFFERS**

2.1 Offerors should take note that:

2.1.1 the Affordability Confirmation contemplated in 2.2.2 below;

2.1.2 the FICA documents contemplated in 2.2.3;

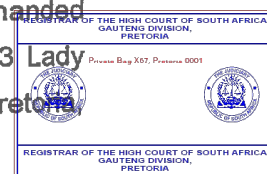
2.1.3 the Resolutions contemplated in 2.2.4 (if the Offeror is not a natural person);

2.1.4 the registration form which will be provided by the Seller at the offices of Sechaba Trust at the addresss set out in 2.1.5.1 below; and

2.1.5 any and all other supporting/additional documentation and/or information as contemplated in 3.1 or elsewhere in this Invitation;

(collectively the "Offer Documents"), must be submitted by no later than 12h00 on 16 September 2022 ("Closing Date and Time") and must either be:

2.1.5.1 placed in a sealed envelope marked "Offer: Lot xxx" and handed in to reception at the offices of Sechaba Trust; Unit G03 Brooks Office Park, No. 14 12th Street, Menlo Park, Pretoria, 0081, Ph: (012) 340 0093 and/or;



2.1.5.2 emailed to cmurray@sechaba.co.za with cc email to legal2@sechaba.co.za .

No bids submitted after this time will be considered.

2.2 Offerors who intend making an Offer to acquire the Lots are advised that –

2.2.1 this Invitation is subject to the following pre-requisites -

2.2.1.1 each Offer shall be on the terms set out in this Invitation;

2.2.1.2 if the Sale of any of the Lots is cancelled by the Seller as a result of a breach by the Offeror, the Seller shall be entitled to declare forfeiture of the deposit contemplated in 5.2.1 as *rouwkoop*;

2.2.1.3 no person may submit an Offer on behalf of another person.

2.2.2 the Offer must be accompanied by a letter from an accredited bank or financial institution acceptable to the Seller confirming the Offeror's good standing and that financial arrangements are likely to be agreed

with the Offeror (and are being maintained) which will enable the Offeror to pay the Purchase Price. ("**Affordability Confirmation**");

2.2.3 they are required to provide the Seller with all of the required information in terms of the Financial Intelligence Centre Act, No. 38 of 2001 ("**FICA**"), being those documents referred to in **Annexure A** hereto;

2.2.4 if the Offeror is not a natural person, it will be required to provide the Seller with copies of all authorising resolutions, authorising the –

2.2.4.1 Offeror to make the Offer;

2.2.4.2 Offeror to be bound by the provisions of the Offer Documents; and

2.2.4.3 Offeror to do all such things as may be necessary to give effect to and implement the Offer Documents;

in a form acceptable to the Seller.



3 **ADDITIONAL INFORMATION, DELETIONS AND AMENDMENTS**

3.1 The Offeror may supply the Seller with such additional information and/or documents as the Offeror may wish to bring to the attention of the Seller, particularly such information as may satisfy the Seller that the Offeror is a *bona fide* Offeror who is willing and able to comply with its obligations.

4 **THE ACCEPTANCE PROCEDURE**

4.1 The date for the announcement of the successful Offer ("**Successful Lot Offer**") is provisionally scheduled for 21 September 2022 at 12:00. However, the Seller in its sole discretion is entitled to postpone the announcement of the Successful Offer (if any) to a later date and time (which later date and time will be announced on the Designated Date and Time) and the scheduled or deferred date upon which the Successful Offer (if any) is so announced, shall be referred to herein as the "**Announcement Date**".

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- 4.2 The successful Offeror will be the Offeror who, in the sole and absolute discretion of the Seller, has submitted the Offer which is most beneficial to creditors of Comair Limited (in provisional liquidation).
- 4.3 Prior to the acceptance of any Offer, the Seller may in its sole and absolute discretion, request in writing, further information from any of the Offerors in order to assist the Seller in making its decision on who should be the Successful Offeror.
- 4.4 Each Offeror acknowledges and agrees that by submitting an Offer, it grants the Seller an irrevocable put option to sell the particular Lot to the Offeror upon the terms of the Sale Agreement. The aforementioned put options will remain open for acceptance by the Seller from the date and time of submission of the Offer until 12:00 on 04 October 2022 ("**Validity Period**"). The purpose of all Offers remaining valid for the Validity Period is to enable the Seller to accept another offer in the event that the Successful Offer fails for any reason during the Validity Period.
- 4.5 If the Offer of the Offeror is the Successful Offer and, for any reason, it fails (including due to the Offeror breaching any of the terms contained herein or in the Sale Agreement) within the Validity Period, then the Seller shall be entitled to (but not be obliged to) select another Offer which in his discretion is the next most beneficial Offer for creditors.



5 PAYMENT OF PURCHASE PRICE

- 5.1 The Purchase Price is payable to the Seller on the transfer of title to the particular Lot from the Seller into the name of the Offeror in accordance with the Sale Agreement ("**Transfer Date**").
- 5.2 In order to secure the payment of the Purchase Price:
- 5.2.1 the Offeror must, within a period of five (5) Business Days after Offer submission, deposit an amount equal to 5% of the Purchase Price with the attorneys nominated by the Seller, to be held in trust in an interest

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bearing trust investment account in terms of section 86(4) of the Legal Practice Act No 28 of 2014, in the name of and for the benefit of the Offeror pending the Transfer Date, upon which date it shall be released to the Seller and all interest accrued prior to the Transfer Date will be paid to the Offeror; and

- 5.2.2 the Offeror must, within a period of thirty (30) calendar days after Offer submission, provide the Seller with an unconditional, irrevocable guarantee issued by a bank or financial institution approved by the Seller for payment of the balance of Purchase Price in accordance with the provisions of the Sale Agreement.

- 5.3 The deposit referred to in 5.2.1 will only be refundable if the Seller is not in a position to fulfil its obligations in terms of the Sale Agreement.



- 5.4 The provisions of paragraph 5.1 will apply *mutatis mutandis* even where the Offer is a subsequent Offer accepted by the Seller (after any Successful Offer fails) as contemplated in paragraph 4.5 above.

- 5.5 Each amount payable by Offeror under the Sale Agreement is exclusive of any VAT which is chargeable on it. Accordingly, if VAT is or becomes chargeable and Seller is required to account to the relevant tax authority for the VAT, the Offeror must immediately upon demand by Seller pay to Seller an amount equal to the amount of the VAT (in addition to the amount payable).

6 TERMS OF SALE AGREEMENT

- 6.1 The terms and conditions of the sale by the Seller to the Offeror are contained in the Sale Agreement.
- 6.2 Upon the Seller accepting an Offer, a binding agreement between the Seller and the successful Offeror shall be concluded on the terms and conditions contained in the Sale Agreement which will be provided at the time of acceptance of the Offer by the Seller.

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7 SELLER NOT OBLIGED TO ACCEPT ANY OFFER

Notwithstanding anything to the contrary contained in this Invitation, the Seller reserves the right, in his sole and absolute discretion, to decline all Offers received without furnishing any reasons, despite it being the intention of this Invitation to receive Offers to dispose of the Lots expediently and despite there being no intention or desire for this Invitation process not to result in a final sale of the Lots as soon as possible.

8 GENERAL

8.1 Offerors shall be responsible for all the costs that they shall incur in relation to the submission of their Offers, any due diligence investigation undertaken, and any advice taken in respect of their Offers.



8.2 Offerors accept full responsibility for the proper completion and execution of the Sale Agreement.

8.3 All Offerors are entitled to inspect the Immoveable Properties aircraft, aircraft documents, and other assets upon prior arrangement with the Seller or his agent.

8.4 The conduct of the Offer process is subject to the control of the Seller, who have the right to regulate the procedure. In the event of any dispute arising during the process, the decision of the Seller shall be final and binding.

8.5 Every prospective Offeror is required to read the terms of this Invitation and should not submit an Offer unless it has done so. The Offeror by submitting an Offer acknowledges that it has read, understands and accepts the terms of this Invitation.

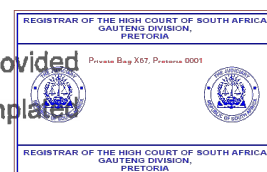
8.6 Any error by the Seller shall be capable of being remedied at the Sellers sole and absolute discretion.

8.7 No Offer may be withdrawn after submission thereof.

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- 8.8 In the event of the sale requiring the consent of any statutory or regulatory authority or any court of law, then the sale is subject to the granting of such consent.
- 8.9 Any costs and fees that may be occasioned as a result of the Offeror engaging the services of any professionals who may have been involved in the preparation of any Offer Documents, shall be for the account of the Offeror only and the Offeror hereby indemnifies the Seller and holds them harmless against any costs and fees that may be incurred in respect of any such engagement.
- 8.10 The Seller shall be entitled to claim damages in lieu of any penalty provided for herein, including but not limited to forfeiture of the deposit contemplated in 2.2.1.2. as *rouwkoop*.
- 8.11 No extension of time, waiver, indulgence or suspension of any of the provisions of this Invitation, which the Seller may have given, shall be binding unless recorded in a written document signed by the Seller.



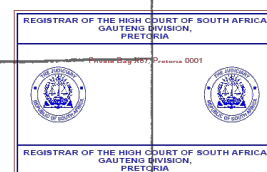
9. SUMMARY OF SALIENT DATES AND TERMS

DATE/TERM	DESCRIPTION
Affordability Confirmation to be submitted	On submission of Offer
Announcement Date and time	12:00 on 21 September 2022, being the provisional date set for announcement of the Successful Offer, if any.
Closing Date and Time	12:00 on 16 September 2022, being the latest date and time upon which the Offer Documents can be lodged at the offices of Sechaba Trust, Unit G03 Lady Brooks Office Park, No. 14 12 th Street, Menlo Park, Pretoria, 0081, or emailed to the emailed addresses set out in 2.1.5.2.

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Announcement Date and Time	12:00 on 19 September 2022, being the date and time upon which the Successful Offer (if any) is so announced, by the Seller.
Offer Documents	The documents contemplated in paragraph 2.1 of this Invitation.
Sale Agreement	The document entitled "Sale Agreement" which contains the binding terms and conditions upon which the Seller is prepared to sell the particular Lot to the Successful Offeror.
Payment of Purchase Price to be made on	Transfer Date
Payment of Purchase Price to be secured by	5% deposit within within a period of five (5) Business Days after the Offer shall have been accepted and shall have become unconditional in accordance with its terms ; and an irrevocable bank guarantee for the balance within a period of thirty (30) calendar days after the Offer shall have been accepted and shall have become unconditional in accordance with its terms
Validity Period of Offer	In respect of each Offeror, the period during which all Offers remain irrevocable and open for acceptance by the Seller, i.e. from the date and time of submission of the Offer until 12:00 on 04 October 2022.



C Murray

**Cloete Murray – for and on behalf of
the Provisional Liquidators of Comair
Limited (In provisional liquidation)
(the Seiler)**

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10. AMOUNT OF THE PURCHASE PRICE AS CONTAINED IN THE SALE AGREEMENT:

By my/our signature below, I/we, the undersigned _____ as Offeror, hereby accept the invitation to submit an Offer set out herein on the terms set out above and in the Sale Agreement, and offer the following Purchase Price subject to the terms and conditions as set out in the Sale Agreement:

Lot No: _____

R _____

(_____

_____)

Excluding VAT (if any)



Signed at _____ on _____ 2022
for _____ Offeror

DRAFT - NOT FOR SIGNATURE

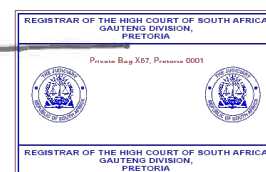
who warrants that he/she is duly
authorised hereto

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ANNEXURE A – FICA DOCUMENTS

Natural Persons

1. South African identity document (foreigners: passport)
2. Utility bill addressed to your residential address less than 3 months (accounts for mobile phones are not acceptable)
3. South African Income Tax reference number
4. (Confirmation marital status, i.e. unmarried or married)



Natural Persons If Married

5. Marriage certificate
 - If married IN community of property – no antenuptial contract
6. S.A. identity document (foreigner: passport) of your SPOUSE
 - If married OUT of community of property – by Antenuptial contract (“ANC”)
7. Page 1 (and page 2 if necessary) reflecting the registered number and names of both parties
 - If your marriage is governed by the Laws of another country / state
8. S.A. identity document (foreigner: passport) of your SPOUSE
9. Name of the country/state governing your marriage, i.e. the country where the husband was living at the time of the marriage with the intention of staying there permanently.

Entities

- Person acting on behalf of the Entity must comply with paragraphs 1 to 4 above
- All directors / members / trustees must also comply with paragraphs 1 to 4 above

Plus the following:

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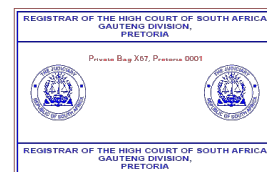
Compare Result B/#6981677v1
23082021

Companies

1. CoR 15.1.A (Memorandum of Incorporation)
2. CoR 21(Notice of Change of Registered Address)

Close Corporation

1. CK1
2. CK2 (if applicable)



Trusts

1. Letters of Authority / Master's Certificate
2. Trust Deed and all amendments thereto
3. Resolution to approve the purchase taken before the Agreement of Sale was signed.

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