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TO: TO ALL KNOWN CREDITORS

21 July 2022

Dear Sir/Madam

COMAIR LIMITED (IN PROVISIONAL LIQUIDATION)

EXTENSION OF THE RETURN DATE

We advise that an application will be made to the High Court, Gauteng Division on 26 July 2022 (return date) for an extension of the return date to 11 December 2022 or alternatively a date the Registrar of the High Court allocates for the matter. We will publish the date once the Registrar has confirmed it.

We attach the Founding Affidavit which sets out the legal basis and facts upon which the application is made. The annexures to the Affidavit are available on request at: liquidator@comair.co.za.

Please be advised accordingly.

Yours faithfully

C Murray

CLOETE MURRAY

OBO PROVISIONAL CO-LIQUIDATORS

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

CASE NO: 2022/20111

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



FOUNDING AFFIDAVIT

I, the undersigned,

CLOETE MURRAY

do hereby make oath and say that –

- 1 I am a liquidator with my principal place of business situate at Unit G03, Lady Brooks Office Park, No 14, 12th Avenue, (Corner Brooklyn and Justice Mahomed Streets), Menlo Park, Pretoria, 0081.
- 2 The facts herein contained are within my personal knowledge, unless indicated to the contrary, and are to the best of my knowledge and belief both true and correct.

THE PARTIES

- 3 I am the **first applicant** in this application in my capacity as joint provisional liquidator (together with the second to fifth applicants) of the first respondent.
- 4 The **second applicant** is KGASHANE CHRISTOPHER MONYELA N.O., a liquidator with his principal place of business at 405 Moreleta Street, Silverton, Pretoria, 0184. The second applicant is one of the joint provisional liquidators of the first respondent and is cited herein as such. The second applicant supports this application as is evident from his confirmatory affidavit attached hereto marked "FA1.A".

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- 5 The **third applicant** is AHMED CARIM N.O., a liquidator with his principal place of business at 1 Fehrsen Street, Brooklyn, Pretoria, 0181. The third applicant is also one of the joint provisional liquidators of the first respondent and is cited herein as such. The third applicant supports this application as is evident from his confirmatory affidavit attached hereto marked "**FA1.B**".
- 6 The **fourth applicant** is TRACY ANNE CAMERON N.O., a liquidator with her principal place of business at 295 Pietermaritz Street, Pietermaritzburg, 3201. The fourth applicant is one of the joint provisional liquidators of the first respondent, and is cited herein as such. The fourth applicant supports this application as is evident from her confirmatory affidavit attached hereto marked "**FA1.C**".
- 7 The **fifth applicant** is BUHLE JEFFREY ERIC BUTHELEZI N.O., a liquidator with his principal place of business at 19 Teebos Avenue, 1st Floor, Palm ridge, 1488. The fifth applicant is one of the joint provisional liquidators of the first respondent, and is cited herein as such. The fifth applicant supports this application as is evident from his confirmatory affidavit attached hereto marked "**FA1.D**". I refer to the first to fifth applicants collectively as "the provisional liquidators" or "the applicants".
- 8 The **first respondent** is Comair Limited (in Provisional Liquidation) (Registration Number: 1967/006783/06) ("**Company**" or "**the first respondent**"), a company with its registered address and principal place of business at 2 – 4 Fortress Road, Rhodesfield, Kempton Park, Gauteng. A certificate obtained from the Companies and

Intellectual Property Commission ("the CIPC") in confirmation of the particulars and registered address of the Company is attached hereto and marked "FA2".

- 9 The **second to second to eleven thousand five hundred and forty third respondents respondents** (collectively "Affected Persons") are the Company's affected persons, as defined in section 128 of the Companies Act 71 of 2008 ("Companies Act") and who include creditors and shareholders of the Company who voted on the Company's business rescue plan, as amended, and that have a direct legal interest in the outcome of these proceedings. The Affected Persons' known details are set out in Annexure A to the application which the Company's erstwhile business rescue practitioners brought under the present case number (*Caselines page number 001-66 to 001-230*).

JURISDICTION

- 10 This Court has jurisdiction to hear this application by virtue of the fact that the Company's registered address falls within its geographical area of jurisdiction, and the provisional liquidation order was granted by this Court.

LOCUS STANDI

- 11 The Company was placed under provisional liquidation by order of this Court on 14 June 2022, a copy of which is attached hereto and marked "FA3" ("the Provisional Liquidation Order").

12 The provisional liquidators have locus standi by virtue of the fact that the second to fifth applicants and I have:

12.1 been appointed by the Master of the High Court as the Company's joint provisional liquidators as evidenced by the Certificate of Provisional Appointment, a copy of which is attached hereto as annexure "FA4" ; and

12.2 extended powers, per the order dated 28 June 2022 ("28 June Court Order"), a copy of which is attached hereto and marked "FA5".

NATURE OF APPLICATION

This is an application for an order in the following terms:

13 that the rule *nisi* per the Provisional Liquidation Order (FA3), calling upon the respondents and all interested persons to show cause, if any, why: -

13.1 the Company should not be finally wound up; and

13.2 the costs of this application should not be costs in the winding up,

be extended to 10 December 2022;

14 that service of the order sought in this application be effected:

14.1 on the Affected Persons by email; and

14.2 by publication on the Company's and Sechaba Trust's websites,

in line with the relief that was granted to the second to fifth respondents and me in the orders annexed as Provisional Liquidation Order (FA3) and the 28 June Court Order (FA5).

SUBSTITUTED SERVICE

- 15 This Court has in terms of the Provisional Liquidation Order (FA3) permitted service on Affected Persons, as defined in section 128 of the Companies Act, who would include the Creditors, to be effected by substituted service by e-mail.
- 16 The provisional liquidators for reasons previously advanced, seek similar leave from this Court in respect of the service on Affected Persons of the order sought in this application.
- 17 The provisional liquidators would face severe logistical and financial hurdles in attempting to serve the order sought, if granted, on the Affected Persons, some eleven thousand five hundred and forty three persons, should substituted service not be permitted.
- 18 I say this because the physical addresses of only a few, but not all the Affected Persons are known. These details are not available to the applicants.

- 19 The Affected Persons, in the course of the first respondent's business rescue proceedings, received service of all notices and Status Reports per email and by publication on the Company's website, as contemplated in the Companies Act. The Affected Persons have also, in the course of the first respondent's provisional liquidations proceedings, received communications from the applicants per email.
- 20 Thus the only alternative is to seek this Court's leave to employ substituted service of the order sought, if granted, on the Affected Persons.
- 21 Against this backdrop, we seek this Court's leave to authorise substituted service of the order sought, on the Affected Persons, as follows:-
- 21.1 on the Affected Persons by email; and
- 21.2 by publication on the Company's and Sechaba Trust's website, Sechaba Trust being the office which is responsible for the day-to-day administration of the Company's insolvent estate

in line with the relief that was granted to the second to fifth applicants and me in the 28 June Court Order (FA5).

PROVISIONAL LIQUIDATION PROCEEDINGS

22 The Provisional Liquidation Order was served in terms of section 346A of the Companies Act 61 of 1973, as amended, and as directed by this Court. A service affidavit is attached hereto and marked "FA6".

23 In terms of the 28 June Court Order (FA5), the provisional liquidators have received no less than 21 letters of interest from the following parties, all of whom have indicated an interest in purchasing either the Company as a going concern, alternatively, the assets of the Company, as the case may be,:

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(collectively "Interested Parties")

- 24 Non-disclosure and Confidentiality Agreements have been concluded with these Interested Parties, and meetings between the provisional liquidators and these Interested Parties have either been held or are in the process of being scheduled.
- 25 Once the provisional liquidators are satisfied in each case that such Interested Parties have the necessary funds available to purchase the Company as a going concern, alternatively, the Company's assets, as the case may be, out of provisional liquidation, the relevant Interested Parties will be allowed to commence their respective due diligence processes.
- 26 Where the Interested Parties have indicated that they are interested in purchasing the Company as a going concern, it is relevant that the Company's Aircraft Operator's Certificate ("AOC"), under which it may conduct commercial airline operations in terms of the South African Civil Aviation Regulations of 2011, has been suspended by the South African Civil Aviation Authority ("SACAA") whilst the Company is under provisional liquidation, but will likely be cancelled by the CAA in the event that the Company is placed under final winding-up. A copy of the AOC is attached hereto marked "FA7".

- 27 Similarly, the Company's Air Service Licenses (issued under the Air Service Licenses Act 115 of 1990) and the International Air Service Licenses (issued under the International Air Services Licenses Act 60 of 1993), required for any service operated by means of an aircraft for reward, and where either or both of which ("the Licenses") is/are required for an airline to be issued with an AOC, will likely be cancelled by the respective Air Service Licensing Councils should the company be placed into final liquidation. Copies of the Licenses are attached as annexures "FA8" and "FA9" respectively.
- 28 The AOC and the Licenses are the most valuable unsecured assets of the Company, and may therefore hold the greatest possibility of realizing a dividend for the Company's concurrent creditors. The balance of the Company's most valuable assets, being the fleet of aircraft, are encumbered in favour of the Company's secured creditors.
- 29 It is expected that the Interested Parties will take approximately a month to complete their due diligence processes in order to make binding offers, if any, to the Company. Should any one or more of these binding offers be made in the course of proceedings contemplated in section 155 of the Companies Act 71 of 2008, it may take at least another two months to complete that process.
- 30 Once a binding offer/s has/have been received, these offers will have to be presented to the Company's creditors or respective classes of Creditors, or the Master, as the case may be. The second to fifth applicants and I will entertain an offer based on

instructions received at a meeting/s of creditors or class/es of creditors, or with the written permission of the Master, as the case may be.

31 Thereafter, given the value expected, various statutory and regulatory approvals will have to be sought, including Competition Commission approval.

32 In the circumstances, the second to fifth applicants and I request that the *rule nisi* that was granted on 14 June 2022 in terms of the Provisional Liquidation Order be extended to 10 December 2022 to afford time to complete or at least advance the process for a potential sale as described above. The applicants believe that it will be in the best interests of the general body of creditors, and perhaps even other Affected Persons, for this process to be pursued.



CLOETE MURRAY

I certify that this affidavit was signed and sworn to before me at **Pretoria** on **29th** this the **20th** day of **JULY 2022** by the deponent who acknowledged that he knows and understands the contents of this affidavit, has no objection to taking this oath, considers 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:

JULIET MARAIS
PRACTICING ATTORNEY
LADY BROOKS BUILDING
C/O CHARLES & JUSTICE MAHOMED STREET
MENLO PARK
COMMISSIONER OF OATHS