

AIRLINES ASSOCIATION OF SOUTHERN AFRICA



# AASA SUBMISSION ON THE CIVIL AVIATION AMENDMENT BILL [B 44- 2018]

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**Date:** 16 FEBRUARY 2021  
**Time:** 09:00 – 10H30  
**Venue:** On Line ZOOM platform



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA



- The **Airlines Association of Southern Africa (AASA)** represents SADC-based airlines including all South African scheduled commercial airlines.
- AASA works with government, industry and business leaders, policy makers, regulators and planners on policy, legislative, regulatory, operational, safety, security, environmental and financial matters.
- Its objective is to :
  - Work in the mutual best interests of its members
  - ensure a sustainable, viable and profitable airline and air transport industry able to serve and grow the economies of South Africa and the region.



### **In respect of Aviation legislation :**

AASA is mandated by its members to engage and raise issues or areas of concern with Government & regulators (including Department of Transport and SA Civil Aviation Authority) on policy and legislation that impact the operations and business of airlines in the Southern African region.

# AASA Airline Members

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# AASA Associate Members

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amadeus

CAPE TOWN  
AIR ACCESS  
a division of WESGRO



FUJITSU



ASSOCIATION OF  
SOUTHERN AFRICAN TRAVEL AGENTS



AIRBUS



DE HAVILLAND AIRCRAFT  
OF CANADA LIMITED

BOMBARDIER



NACELLE



Lufthansa Technik



Sabre



FlightSafety  
international



Shell Aviation



SITA



The critical issues to be addressed and discussed today are as follows

## 1. Presentation context

- ## 2. Proposed amendments by the Portfolio Committee on Transport for which comment was invited by 30 November 2020:
- AASA response dated 30 November 2020

## 3. Comments on issues raised in previous submissions to the Portfolio Committee by Stakeholders

## 4. Conclusion and Recommendation



# 1. CONTEXT

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- 1. Current draft of Civil Aviation Amendment Bill is B44 -2018 version**
  - Industry is aware of no further version that has been published.
  - DOT presentation at Portfolio Committee on 18 August 2020o
  - AASA letter dated 25 August 2020

- 2. Proposed amendments to Civil Aviation Amendment Bill by Portfolio Committee on Transport –**
  - Response in AASA letter of 30 November 2020.
  - Priority of this presentation.

- 3. Note other matters raised previously:**
  - Seek clarification from the Committee on the status of these matters in respect of the Amendment Bill

## **2. PROPOSED AMENDMENT TO CIVIL AVIATION AMENDMENT BILL [B44-2018]**

**PORTFOLIO COMMITTEE ON TRANSPORT**



# THE SACAA : PROPOSAL TO BE A PREFERENTIAL CREDITOR

**REF: CLAUSE 13 : Page 28, line 17**

► **Section 74 of the principal Act is amended to add the following subsection :**

*“(5) In instances where a person who has collected any money, fee, charge or levy on behalf of the Civil Aviation Authority is liquidated, placed under business rescue or is placed under administration, the Civil Aviation Authority is entitled, as a preferential creditor, to recover any such money, fee, charge or levy so collected by such a person.”.*

**CONSIDER TOGETHER WITH THE AMENDMENT AS CONTAINED UNDER CLAUSE 60**

# THE SACAA : PROPOSAL TO BE A PREFERENTIAL CREDITOR

**REF: CLAUSE 60 : Page 44, line 11**

- ▶ **Section 155 of the principal Act is amended to replace subsection (1)(xx) from the current amendment with the following subsection (1)(xx):**

*“ ‘(xx) legal action that must be taken for any failure by any person to transmit to the Civil Aviation Authority, as prescribed, any money, fees, charges or levies collected on behalf of the Civil Aviation Authority; and’ ”.*

# THE SACAA : PROPOSAL TO BE A PREFERENTIAL CREDITOR

## ▶ **AASA view:**

- ▶ These amendments taken together are driven by impact of:
  - ▶ Business Rescue of SAA (6 December 2019),
  - ▶ Business Rescue / Provisional Liquidation of SA Express (6 February 2020)
  - ▶ Business Rescue of Comair Limited (5 May 2020)
  - ▶ COVID-19 lockdown and prohibition of air services : 26 March 2020
  - ▶ Revenue source cut overnight, liquidity crisis
  - ▶ Phased reintroduction of air services and changing restrictions locally and internationally
  - ▶ Delayed settlement of debt as airlines manage their cash crisis.

# GLOBAL AIRLINE INDUSTRY : PERFORMANCE / FORECAST

- ▶ **GLOBAL AIRLINE LOSSES :**

|                 |   |                    |
|-----------------|---|--------------------|
| 2020            | : | - US\$ 118 billion |
| Projected 2021: |   | - US\$ 38 billion  |
- ▶ **AFRICAN AIRLINE LOSSES :**

|                 |   |                  |
|-----------------|---|------------------|
| 2020            | : | - US\$ 3 billion |
| Projected 2021: |   | - US\$ 2 billion |
- ▶ **INDUSTRY PERFORMANCE (2020 vs 2019)**
  - ▶ **PASSENGERS :**

|               |   |        |
|---------------|---|--------|
| International | : | -75.6% |
| Domestic      | : | -48.8% |
  - ▶ **CAPACITY :**

|               |   |        |
|---------------|---|--------|
| International | : | -68.1% |
| Domestic      | : | -35.7% |

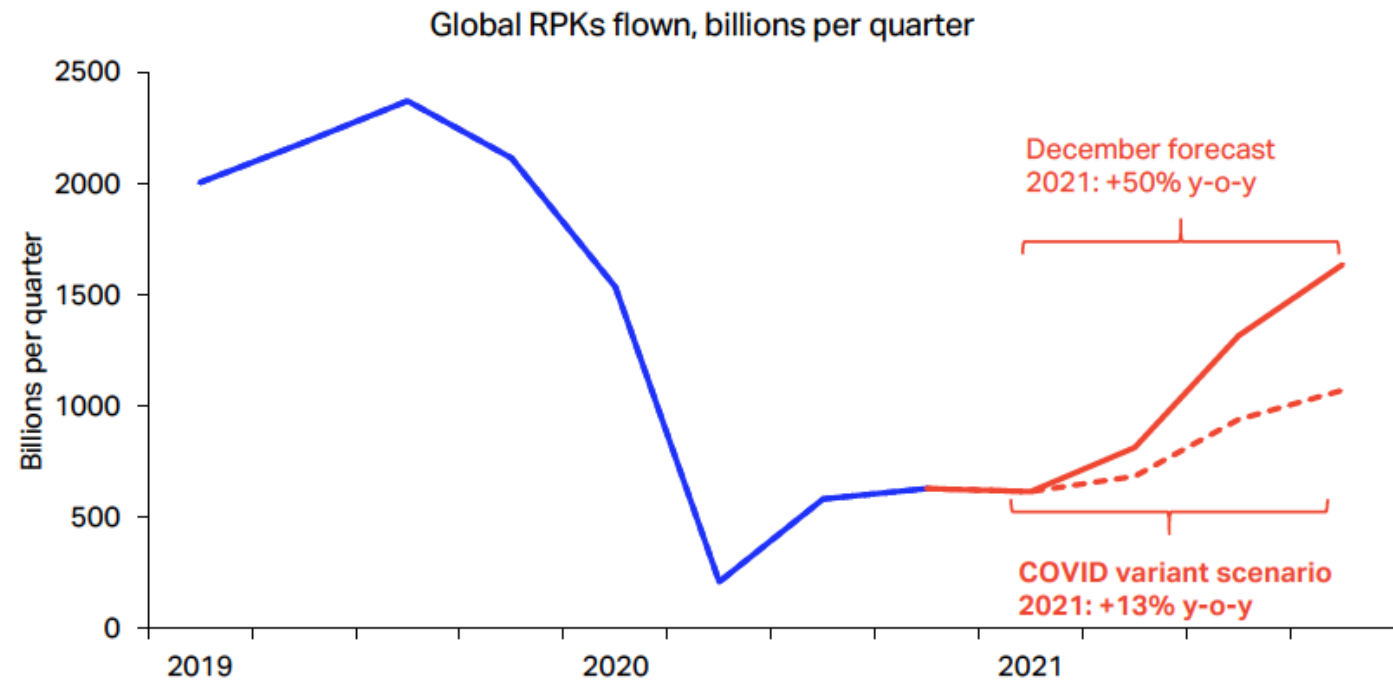
# PERFORMANCE OF THE SOUTH AFRICAN AIRLINE INDUSTRY (ACTUAL)

| PERFORMANCE 2020 VS 2019 (% DECLINE FIN YEAR TO DATE JAN 2021) |          |          |               |          |          |
|--|----------|----------|---------------|----------|----------|
| PAX TOT  | PAX      | PAX      | FLIGHTS TOT   | FLIGHTS  | FLIGHTS  |
| 2020/21 YTD  | DEC 2020 | JAN 2021 | 2020 YTD      | DEC 2020 | JAN 2021 |
| -71.9%   | -56.7%   | -70.6%   | -64.8%        | -35.2%   | -45.1%   |
| DOMESTIC   |          |          | INTERNATIONAL |          |          |
| PAX TOT  | PAX      | PAX      | PAX TOT       | PAX      | PAX      |
| 2020/21 YTD  | DEC 2020 | JAN 2021 | 2020/21 YTD   | DEC 2020 | JAN 2021 |
| -77.0%   | -46.3%   | -63.5%   | -94.1%        | -80.9%   | -86.1%   |
| FLIGHTS TOT  | FLIGHTS  | FLIGHTS  | FLIGHTS TOT   | FLIGHTS  | FLIGHTS  |
| 2020/21 YTD  | DEC 2020 | JAN 2021 | 2020/21 YTD   | DEC 2020 | JAN 2021 |
| -72.5%   | -33.9%   | -50.9%   | -77.0%        | -57.3%   | -62.3%   |

# FUTURE PROSPECTS

**Slow  
Recovery  
- uncertainty**

**RPK path depends on new variants and policy response**  
Risk that 2021 RPKs might only grow 13% to average 38% of 2019 levels

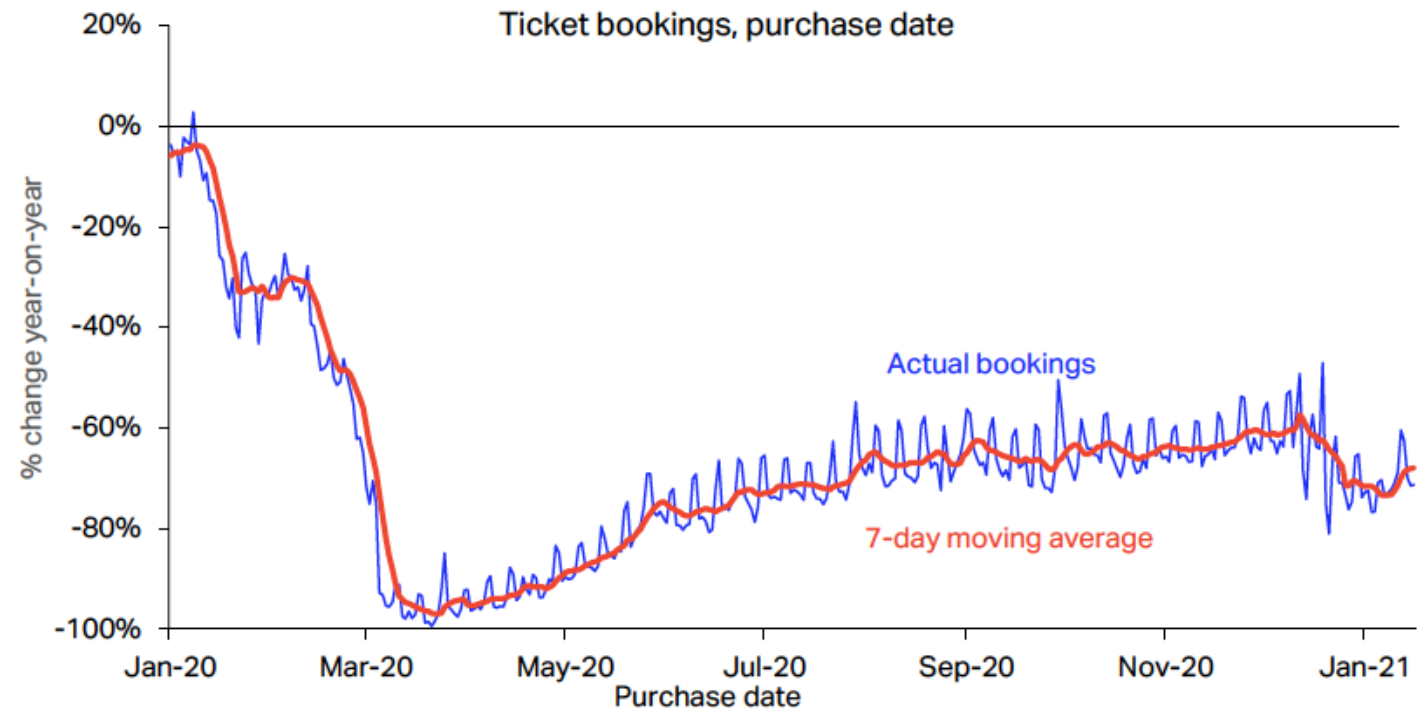


Source: IATA Economics

# FUTURE PROSPECTS

**Forward  
bookings  
- uncertainty**

**Bookings for future travel are down significantly**  
After improving to -60% yoy by end 2020, bookings are now down -70%



Source: IATA Economics using data from DDS



# THE SACAA : PROPOSAL TO BE A PREFERENTIAL CREDITOR

## ▶ A PERSPECTIVE TO CONSIDER:

- ▶ All service providers should receive their dues for service rendered.
- ▶ All aviation stakeholders are in exactly the same position financially – unanticipated devastating losses (could be up to 4 years for recovery).
- ▶ South African aviation industry must have SACAA, Airports, Air Traffic Services
- ▶ In times of crisis, State as shareholder has duty to ensure financial stability of its companies.

# THE SACAA : PROPOSAL TO BE A PREFERENTIAL CREDITOR

## ▶ **A PERSPECTIVE TO CONSIDER (continued):**

- ▶ South Africa must also have an airline industry
  - ▶ But sustainability is in question
  - ▶ Airline industry has received no support from Government in respect of COVID-19 crisis.
  - ▶ Selective infrastructure service providers have proposed some relief but these are still to be finalized – intended to relieve operating cost burden
- ▶ Airlines want to settle debts –
  - ▶ But due to liquidity and cash crisis – settlement is sometimes a challenge
- ▶ Proposal places SACAA above all industry stakeholders in the credit line. Why?

# THE SACAA : PROPOSAL TO BE A PREFERENTIAL CREDITOR

## ► Legal consideration:

- Civil Aviation Regulation 187.02.1 (1) states : “A civil aviation authority passenger safety charge amounting to R26.23 **shall be payable by aircraft passengers departing on an aircraft** from an aerodrome within the Republic of South Africa on a scheduled public air transport flight..... “
- Civil Aviation Regulation 187.02.2 (1) The civil aviation authority passenger safety charge becomes **due to the Authority** by an operator on the departure of a flight as contemplated in regulation 187.02.1(1).
- Passenger Safety Charge is **collected by the airline as an agent of the SACAA** on its behalf.
- If amendments proposed by Portfolio Committee re Clause 13 and Clause 60, then legislation would make SACAA a preferential creditor for collection of Passenger Safety Charge only.
- No other levies or charges under Part 187 would fall into this category as they are charges made direct to the airline – SACAA should remain a concurrent creditor.

# THE SACAA : PROPOSAL TO BE A PREFERENTIAL CREDITOR

## ► Legal consideration (cont.)

- Clause 13 amendment would make SACAA a preferential creditor in respect of collection of Passenger Safety Charge only by the Operator on behalf of SACAA.
- This principle must be applied consistently.
- Clause 60 includes proposed amendment to 155(1)(xx) to read  
*“ (xx) legal action that must be taken for any failure by any person to transmit to the Civil Aviation Authority, as prescribed, any money, fees, charges or levies collected on behalf of the Civil Aviation Authority; and”*

# THE SACAA : PROPOSAL TO BE A PREFERENTIAL CREDITOR

## ► Legal consideration (cont.)

- However, as any monies, fees, charges or levies, other than the Passenger Safety Charge are not collected on behalf of the SACAA by the operator but charged directly to the operator, these charges cannot be included in 155(1)(xx)

- In addition, 155(1)(ww) states

*“(ww) requiring any person who collects any money, fees, charges or levies on behalf of the Civil Aviation Authority to establish a trust account where such money, fees, charges or levies may be kept for onward transmittal to the Civil Aviation Authority”;*

# THE SACAA : PROPOSAL TO BE A PREFERENTIAL CREDITOR

## ► Proposal:

- Section 155(1)(xx) be amended to

*“ (xx) legal action that must be taken for any failure by any person to transmit to the Civil Aviation Authority, as prescribed, any ~~money, fees, charges or levies~~ Passenger Safety Charges collected on behalf of the Civil Aviation Authority; and”*

- Section 155(1)(ww) be deleted since:

- The SACAA would be protected by its preferential creditor status by the amended legislation
- SACAA would be a concurrent creditor for all other money, fees, charges or levies.

# THE SACAA : PROPOSAL TO BE A PREFERENTIAL CREDITOR

- ▶ In view of the state of the industry:
  - ▶ It is concerning if the SACAA is placed above the rest of the industry in respect of preferential creditor status.
  - ▶ SACAA has received financial assistance from Government
- ▶ **RECOMMENDATION :**
  - ▶ Preferential creditor status not be pursued and be removed from proposed amendment bill – it does not have to be included.
  - ▶ If it is pursued, then recommended amendments to 155(1)(xx) and (ww) be made to ensure consistency with the principles applied, namely
    - ▶ Only in respect of Passenger Safety Charge collected by Operator on behalf of SACAA
    - ▶ All other charges charged direct to Operator : SACAA should be concurrent creditor.



## OTHER ISSUES

- ▶ No further revision of the proposed Civil Aviation Amendment Bill has been published.
- ▶ Only amendment on table is that proposed by Portfolio Committee.
- ▶ Accordingly we assume
  - ▶ Proposals made by DOT in its submission on 18 August 2020 to which AASA responded on 25 August 2020, are not being considered except in respect of the preferential creditor status of the SACAA.
  - ▶ The principles of ASIB as a separate entity from the SACAA will be maintained.

# OTHER ISSUES

## ▶ ASIB ISSUES

- ▶ ASIB to be a separate entity from the SACAA
- ▶ In 4 March 2020 presentation to the Portfolio Committee, we noted:
  - ▶ Lack of clarity on role of Executive appointed by SACAA responsible for accident investigation and relation with ASIB and;
  - ▶ Concern of independence of the person appointed in terms of Section 28(5) and who reports direct to ASIB through the Executive – is this the same Executive appointed by the SACAA?

In summary the critical issues are as follows

1. The whole Aviation Industry is in crisis - severe loss of traffic from the initial prohibition on air services, changing lockdown restrictions, varying State restrictions, lack of passenger confidence & desire to fly.
2. SACAA as a preferential creditor :
  - \* Could be applied for collection of Passenger Safety Charge only
  - \* For all other charges, SACAA to be a concurrent creditor
  - \* HOWEVER, should not be necessary to impose this status
  - \* RECOMMENDATION : Remove preferential creditor status proposal
3. Clarification on outstanding issues raised regarding ASIB

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THANK  
YOU!



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA