





**ADDITIONAL INFORMATION REQUESTED BY PCOT ON PASSENGER SAFETY CHARGE, FUEL LEVY AND USER FEES**

1. Section 74 (1) of the Civil Aviation Act, 2009 (the Act) (Act No. 13 of 2009) read with regulation 187.02.1 of the Civil Aviation Regulations, 2011 (regulations) provides that an Operator (airline) is obliged to collect Passenger Safety Charge on behalf of the SACAA as prescribed. Section 74 (1) of the Act read with regulation 187.02.2 of the regulations further provides that an Operator has an obligation to pay, directly to the SACAA, the Passenger Safety Charge collected over a period of a calendar month, within twenty-one (21) days after the last day of the month to which the collected charge relates. If the Passenger Safety Charge, if not paid over to SACAA by the Operator, it becomes part of their day to day finance. As a result, when these Operators are declared insolvent or are placed under business rescue, there is currently no requirement in law that distinguishes between the collected Passenger Safety Charge and the day to day finances of the Operator.
2. The other fees that are collected on behalf of SACAA is the Fuel Levy. The Fuel Levy is collected by fuel wholesale distributors or agents from the sale of fuel/gas, with exemption being applicable to fuel purchased to conduct flights where Passengers Safety Charge is collected (scheduled flights conducted for commercial purposes), fuel exports and where bilateral agreements determines exemptions. Fuel Levy affects fuel purchased to conduct mainly General Aviation (e.g. non-scheduled flights and cargo flights). The Fuel Levy is collected on behalf of SACAA and it forms part of the normal business expenses of the entity that collects it.
3. The current arrangement with regards to Passenger Safety Charge and Fuel Levy places SACAA in a disadvantaged position, as in an instance of business rescue or insolvency, SACAA becomes concurrent creditor and gets allocated whatever amount is available, in equal share with other concurrent creditors and the said share is usually unreasonably lower than the amount owed. It is therefore proposed that collected Passenger Safety Charge and Fuel Levy be secured through the establishment of a trust account so that it does not get affected and is not included as part of normal business finances of Operators and fuel distributors or agents when they get into financial difficulties and are either placed under business rescue or are declared insolvent.
4. The Passenger Safety Charge and Fuel Levy is a tax collected by the Operators and fuel distributors or agents on behalf of SACAA. It does not belong to the Operators, fuel distributors or agents. The current gap needs to be closed through stringent legislative provision otherwise the current legal regime affects the financial stability of SACAA and as, when SACAA runs out of funds, it is left with no option but to approach the State for financial assistance.
5. User Fees are charges by SACAA for services rendered and are prescribed in terms of Part 187 of the Civil Aviation Regulations, 2011. The user fees are paid upfront unless special credit arrangement is made and agreed upon with SACAA. The SACAA can refuse to render services if such fees are not paid and in this instance there is minimum risk of non-payment by clients who require the service.