

**DEPARTMENT: PUBLIC ENTERPRISES**

**REPUBLIC OF SOUTH AFRICA**

**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**QUESTION NO.: 909**

**QUESTION**

**Ms T L Marawu (ATM) to ask the Minister of Public Enterprises:**

 With reference to the challenges that the SA Airways (SAA) is going through in relaunching itself, (details furnished), what steps will he take to ensure that: (a) the new SAA pilot structures reflect the economically active population; and (b) all the Black pilots are retained.

**REPLY**

**According to the information received from SAA:**

(a) The failure to transform the pilot corps at SAA is a symptom of the general failure of leadership at the airline to make pertinent decisions and ensure their implementation. The Regulating Agreement (RA) entered into in 1988’s primary objective was to preserve undeserved privileges accrued through unjust laws that preserved aviation careers to a small minority in this country.

These privileges came with unaffordable perks and salary framework which should have long been remedied. The airline (i.e. the Business Rescue Practitioners) on insistence of the Department is addressing the matter of RA as it cannot become part of the new SAA.

The following is the background to the RA:

* 1. The Regulating Agreement, (“The RA”) is an evergreen collective agreement entered into between South African Airways Pilots Association (SAAPA) and South African Airways (SOC) LTD (SAA) in 1988. The RA regulates the terms and conditions of employment of pilots and contains volumes of onerous provisions on SAA.
	2. It is our view that the RA is unconstitutional and unlawful, and it is imperative that it be terminated.
	3. The unconstitutionality and unlawfulness of the RA relates to the following:
		1. First, the **evergreen nature** of the regulating agreement is in breach of section 23(4) of the Labour Relations Act 66 of 1995 (“the LRA”). Section 23(4) of the LRA does not contemplate or permit collective agreements which have no fixed term, no specific notice period and which may not be terminated on reasonable notice – in other words it does not contemplate or permit evergreen collective agreements.
		2. The regulating agreement precludes and impedes SAA achieving meaningful and expeditious transformation which is in breach of the **Constitution and the Employment Equity Act 55 of 1998**. In particular, in terms of the RA, the principle of seniority rigidly and directly affects and controls all elements of the manner in which pilots are employed and dealt with by SAA, including promotions, demotions, salaries and so on. Given the make-up of SAA’s pilot list, which comprises overwhelmingly of white males, this operates to the detriment of and discriminates unfairly against white women, black men, and especially black women.
		3. The regulating agreement effectively **removes core elements of decision-making from the board and management of SAA** and precludes SAA from giving effect to its procurement obligations. This is in breach of the Constitution, the Public Finance Management Act 1 of 1999 and the Companies Act 71 of 2008. The effect of the Regulating Agreement is that SAA is precluded from reaching any agreement to wet-lease SAA aircraft without the consent of SAAPA. The RA has a “succession of ownership” provision which means that notwithstanding any changes in ownership of SAA, the RA will remain in full operation. Considering the fact that Government has taken a decision to find a strategic equity partner (SEP) for SAA, the RA in its current form, combined with succession clauses, will no doubt make SAA less attractive to potential partners.

The RA also subjects key SAA procurement decisions such as which hotels to contract with to the control of SAAPA in that SAAPA is entitled to select the short-list of three hotels from which SAA can choose and even within this short-list, SAA is required to take SAAPA’s preferences into account. It requires SAA to act in breach of Treasury instructions – such as requiring SAA to accommodate pilots and crew in four- or five-star hotels when the Treasury instruction requires that three-star hotels be used.

* + 1. The negotiations at the LCF with the DPE. After more than two and a half months of engagements, no agreement on the restructure of SAA was concluded and no agreement was reached on the VSP offered by DPE. In fact, SAAPA are on record at different forums and in writing to SAA that they never agreed to the VSP and reserve their rights in that regard.

(B) In engagement with potential Strategic Equity Partners (SEPs), the Department has placed the transformation of pilot corps as an imperative to the partnership. This is to ensure that National developmental objectives in Aviation should still receive priority in the new SAA. An appropriate balance must be attained to correct historical discrimination, retention of key skills, and achieving the correct demographic and gender objectives. This is a non-negotiable set of objectives. It is important that all pilots cooperate in achieving these objectives.