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IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Division, Pretoria

CASE NO: **2024-130028**

In the matter between:

Sakeliga NPC	Plaintiff / Applicant / Appellant
and	
Air Service Licensing Council,Leroy Musa Nsibande NO ,Minister of Transport,Director-General: The Department of Transport,South African Civil Aviation Authority	Defendant / Respondent

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Notice of Motion (Long Form)

NOTE: **This document was filed electronically by the Registrar on 12/11/2024 at 12:52:43 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 Number: _____

In the matter between:

SAKELIGA NPC	Applicant
and	
AIR SERVICE LICENSING COUNCIL	First Respondent
LEROY MUSA NSIBANDE N.O	Second Respondent
MINISTER OF TRANSPORT	Third Respondent
DIRECTOR-GENERAL: THE DEPARTMENT OF TRANSPORT	Fourth Respondent
SOUTH AFRICAN CIVIL AVIATION AUTHORITY	Fifth Respondent

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NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE that the applicant intends applying to this Court on a date to be determined by the Registrar, for an order in the following terms:

1 Reviewing, setting aside, and declaring unlawful, the decision of the first respondent to include as a requirement in adjudicating applications for licences in terms of the Air Services Licensing Act, No 115 of 1990, ("the Act"), the criteria set out in section 10(1) of the B-BBEE Act.

2 To the extent necessary, declaring unlawful the conduct of the first respondent in including as a requirement in adjudicating applications for licences in terms of the Act, the criteria set out in section 10(1) of the B-BBEE Act.

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3 To the extent necessary, declaring unlawful the policy and practice of the first respondent in including as a requirement in applications for licences in terms of the Act, the criteria set out in section 10(1) of the B-BBEE Act.

4 To the extent necessary, declaring unlawful the conduct of the first respondent in including race-based requirements extraneous to the Act and regulations under the Act in adjudicating applications for licences in terms of the Act.

5 Declaring unlawful the prohibition imposed by the first respondent on license applicants and attendees from:



5.1 accessing personal electronic devices during public hearings and licencing meetings;

5.2 making recordings of any proceedings before or interactions with the first respondent and its staff.

6 Ordering that the party and party costs of these proceedings be borne by the first respondent, along with any other respondent opposing the matter, jointly and severally. Costs to include the costs of two counsel (where so employed) on scale C.

7 Further and/or alternative relief.

TAKE FURTHER NOTICE that the affidavit of **TOBIAS VIVIAN ALBERTS** along with the confirmatory affidavit of **DANIELLE ESTERHUYSEN** will be used in support of this application.

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TAKE NOTICE FURTHER that the applicant has appointed the offices of their attorneys, **KRIEK WASSENAAR & VENTER INCORPORATED** as the address at which they will accept service of all processes and proceedings herein.

TAKE NOTICE FURTHER that the first and second respondents are hereby called upon, in terms of rule 53(1)(a) of the Uniform Rules of Court, to show cause why the abovementioned decisions should not be reviewed and set aside.



TAKE NOTICE FURTHER that in terms of rule 53(1)(b) of the Uniform Rules of Court, the first and second respondents are hereby called upon to dispatch to the Registrar within 15 days of the receipt of the applicant's notice of motion, the record that relates to the making of the decisions and conduct, which are sought to be reviewed and set aside, and form the subject of this application, and together with such reasons as the respondents are by law required or may require to give or make, and to notify the applicant's attorneys that they has done so.

TAKE NOTICE FURTHER that within 10 days of receipt of the record from the Registrar, the applicant may, by delivery of a notice and accompanying affidavit/s, amend, add to or vary the terms of their notice of motion and supplement the founding affidavit in terms of rule 53(4) of the Uniform Rules of Court.

TAKE NOTICE FURTHER that if any of the respondents intend to oppose the relief sought in this notice of motion, such Respondents are required:

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(a) within 15 days of the delivery of the applicant's supplementary affidavit/s, or the expiry of the period contemplated for the applicant to file supplementary affidavit/s, to deliver a notice to the applicant's attorneys that such respondents intend to oppose and in such notice to appoint an address within 15 kilometres of the office of the Registrar of this Honourable Court at which the respondents will accept notice and service of all process in these proceedings;

(b) within 30 days of the expiry of the time referred to in rule 53(4) of the Uniform rules of Court, to deliver any affidavits as the respondents may desire in answer to the allegations made by the applicant.

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KINDLY TAKE FURTHER NOTICE that if you fail to notify the attorney for the applicant of your intention to oppose the application within 15 (FIFTEEN) days after the date of receipt of this notice of motion and/or if you fail to serve and file an answering affidavit within 30 (THIRTY) days after expiry of the time period referred to in Rule 53(4), this application will be set down on the unopposed motion roll on a date to be arranged with the Registrar.

DATED AT PRETORIA ON THIS THE 12th DAY OF NOVEMBER 2024.

KRIEK WASSENAAR & VENTER INC

Attorneys for Applicant

Third Floor, HB Forum Building

13 Stamvrug Street

Val de Grace

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PRETORIA

Tel: (012) 803 4719

Email: rohann@kriekprok.co.za

Ref: R Eloff / QB1184

TO: **THE REGISTRAR OF THE HIGH COURT PRETORIA**

GAUTENG DIVISION

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AND TO: **AIR SERVICE LICENSING COUNCIL**

First Respondent

Forum Building

Cnr Struben & Bosman Street

Pretoria

BY SHERIFF

AND TO: **CHAIRPERSON OF THE AIR SERVICE LICENSING COUNCIL**

LEROY MUSA NSIBANDE N.O

Second Respondent

Forum Building

Cnr Struben & Bosman Street

Pretoria

BY SHERIFF

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AND TO: MINISTER OF TRANSPORT

Third Respondent

Office of the Ministry: Department of Transport

Forum Building

159 Struben Street

Pretoria

BY SHERIFF



AND TO: DIRECTOR-GENERAL:

THE DEPARTMENT OF TRANSPORT

Fourth Respondent

Office of the Ministry: Department of Transport

Forum Building

159 Struben Street

Pretoria

BY SHERIFF

AND TO: SOUTH AFRICAN CIVIL AVIATION AUTHORITY

Fifth Respondent

Ikhaya Lokundiza

16 Treur Close

Waterfall Park

Bekker Street

Midrand, Johannesburg

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Tel: 011 545 1000

Fax. 011 545 1465

BY SHERIFF

AND TO: THE STATE ATTORNEY

Old Mutual Centre

8th Floor

167 Andries Street

Pretoria



BY HAND

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: _____

In the matter between:

SAKELIGA NPC	Applicant
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FOUNDING AFFIDAVIT

Introduction

I, the undersigned,

TOBIAS VIVIAN ALBERTS

do hereby state under oath as follows:

1 I am a major male and am currently employed as a legal officer of the applicant.

2 The facts deposed to in this affidavit are, unless the context indicates otherwise, within my personal knowledge, and are both true and correct to the best of my belief. Where I deal with legal issues, this is done on the advice of my legal representatives, which advice I duly accept as correct. Where what is recorded

below constitutes hearsay, I request that same be admitted in the context of the facts and I will attempt to identify the original source of the information and corroborate the veracity thereof as best I can.

3 I am authorised to depose to this affidavit and initiate these proceedings as is evidenced by annexure **FA1**, being a duly signed resolution of delegation of authority confirming my authority.

4 The applicant is Sakeliga NPC, a non-profit company with registration number 2012/043725/08, duly registered and incorporated in terms of the company laws of the Republic of South Africa with its principal place of business at Block A, Floor 5, Loftus Park, 4162 Kirkness Street, Arcadia, Pretoria, Gauteng Province. I shall refer to the applicant hereafter as such or as "Sakeliga", interchangeably.

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5 Sakeliga is a business interest organisation with a supporter and donor base of more than 12,000 businesspeople, companies and organisations, and a network of more than 40,000 subscribers in South Africa. Sakeliga was established in 2011 and was incorporated and registered as a non-profit company in terms of the Companies Act, Act 71 of 2008, in 2012.

6 Sakeliga's main objective is the protection of the constitutional order, the rule of law, free-market principles, and a sustainable business environment within the Republic of South Africa. In seeking to achieve its objectives, Sakeliga undertakes various activities to promote a free market and economic prosperity and to create a favourable business environment in the interest of its supporters and the common good. To give effect to its main objective, Sakeliga also provides support to its supporters and the public at large, which includes legal support and advocacy. As an ancillary object, Sakeliga seeks to act in the interest of its

supporters and members of the public to protect their businesses and other constitutional rights.

7 What I have set out above is also evident from an extract of Sakeliga's memorandum of incorporation, a copy of which I attach hereto marked **FA2**. I respectfully draw the court's attention to clause 4 of the memorandum of incorporation which sets out in more detail the objects, ancillary objects as well as the powers of Sakeliga. I request the court to incorporate the content thereof herein as if specifically set out. I do not attach a full copy of the memorandum of incorporation, because it will make these papers unnecessarily prolix. Should the court or any of the respondents wish to have sight of the full memorandum of incorporation, Sakeliga shall make this available.

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Overview

8 The Air Services Licensing Council, ("the Council"), evaluates new applications or amendments to existing air service licenses based on specific criteria established by the Air Services Licensing Act, No 115 of 1990, ("the Act"), and associated regulations. The limited statutory discretion includes assessing:

8.1 Safety and reliability of the proposed air service;

8.2 Compliance with residency requirements;

8.3 Effective control and use of South African aircraft.

9 An application for such a licence is a costly, long and complicated process. Successfully navigating the process involves a substantial capital outlay before an application can even be made. Much is at stake for the licensee applicants.

10 Only concerns pertaining to a licensee applicant's compliance with specific requirements in section 16(4) of the Act are valid grounds for or against approval.

11 This case concerns in a nutshell the imposition of considerations extraneous in the circumstances to those relevant when application is made for licensing approval under the Act. This is a classic case where an administrative entity is acting *ultra vires*.

12 The Council, the first respondent, issued a letter to Sakeliga dated 14 May 2024. The letter was issued in response to correspondence dated 18 December 2023, wherein Sakeliga requested an undertaking from the first respondent, *inter-alia*, to cease implementing what is clearly a policy and practice wherein race-based (under the auspices of broad-based black economic empowerment) considerations were put to prospective applicants for airline licences as additional requirements for the issuing of licences. Such requirements are nowhere in the Act and its regulations. The first respondent does not state when the impugned policy and practices were implemented, however, it is presumed for the purposes of this application that such decision was taken at a meeting of the Council. The relevant record of proceedings to be requested through the Uniform Rule 53 procedure should clarify this issue.

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13 The relief sought by Sakeliga includes an order to review, set aside, and declare unlawful the first respondent's decision to incorporate race-based criteria, seemingly in line with the criteria of section 10(1) of the Broad-Based Black Economic Empowerment Act 53 of 2003, (the "B-BBEE Act"), when adjudicating license applications under the relevant act. Additionally, Sakeliga seeks declarations of unlawfulness regarding the first respondent's conduct, policy, and

practice of including these criteria, as well as any other extraneous requirements not stipulated by the Act and its regulations, in its licensing process and requirements. The relief also addresses the unlawful prohibition placed by the first respondent on participants, whether such attendees form part of the license applicant's team or are members of the public sitting in on public hearings and meetings, from having access to their personal electronic equipment (such as laptops and cell phones) and electronically recording proceedings under the Act.

14 Not only is this Court enjoined to declare unconstitutional conduct invalid by virtue of section 172(1)(*a*) of the Constitution, but it is empowered by section 172(1)(*b*) of the Constitution to make any order that is just and equitable.

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15 Failing statutory and regulatory amendment, the impugned decision/s, practice, policy, and conduct which reflects these, of the first respondent is patently unlawful and unconstitutional, contrary to PAJA, and stands to be set-aside.

16 At this stage relief is only sought against the first respondent, and any other respondent only to the extent that such elects to oppose the application.

Structure

17 The structure of this affidavit is as follows:

17.1 Parties;

17.2 Standing;

17.3 Summary:

17.4 Legislative framework;

17.5 Issues animating litigation;

17.6 Attempts at non-curial resolution;

17.7 Legal grounds;

17.8 Relief;

17.9 Costs;

17.10 Conclusion.



Parties

The applicant

18 Sakeliga comes to court in furtherance of its mandate, in representing the interests of businesses and entrepreneurs in South Africa, as well as in the public interest in general, with a focus on promoting a conducive environment for economic growth, job creation, and investment. Sakeliga regularly engages in legal and policy advocacy, often successfully participating in legal challenges and initiatives related to business regulations, taxation, and economic policies in the country.

Respondents

First respondent

19 The first respondent, alternatively, "the Council", was established by the Act to license and control domestic air services in South Africa. The Act applies to

anyone who owns, operates, or flies an aircraft in domestic airspace, or operates domestic air services. No one can operate a domestic air service without an air service license. In terms of section 3(2) of the Act, the first respondent's address is required by law to be gazetted. For unknown reasons, it appears that the first respondent has not as stipulated published its address. For the purposes hereof, as far as Sakeliga was able to determine, the physical address applicable is Forum Building, Cnr Struben & Bosman Streets, Pretoria.

20 The first respondent is not, at a factual or legal level, an organ of state, nor is it a public entity, as defined in the Public Finance Management Act, No 1 of 1999 (the "PFMA") and has been removed from Schedule 3A as an organ of state in 2002 by Government Notice in Government Gazette 24042 dated 15 November 2002. It is an independent juristic person, and would, therefore, save for where it is explicitly set out in the statute, not be beholden to extraneous policy dictates.

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Second respondent

21 The second respondent is Leroy Musa Nsibande N.O, cited in his capacity as the Chairperson of the first respondent, *inter alia*, for the purposes of Rule 53. Service will take place at the address of the Council.

Third respondent

22 The third respondent is the Minister of Transport, cited for the interest of that entity in this matter as well as being the nominal respondent, in accordance with the State Liability Act, as amended, service will take place at the office of the Ministry, Department of Transport, 159 Struben Street Forum Building, Pretoria,

as well as the office of the State Attorney, Pretoria. C/O the State Attorney, Old Mutual Centre, 8th Floor, 167 Andries Street, Pretoria, 0001.

23 The third respondent, alternatively, ("the Minister"), on 10 October 2023, published a Ministerial Order through a government Gazette as empowered by Section 100 of the Civil Aviation Act, (No.13 of 2009) for the South African Civil Aviation Authority, ("SACAA"), to provide administrative support to both first respondent and the International Air Service Licensing Council, ("ISLC").

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24 This flows ostensibly from section 9 of the Act and section 10 of the International Air Services Act, 1993 (Act No. 60 of 1993). The idea seemingly behind this was that local operators' domestic and international air service licence applications, as well as foreign operator permit applications, would have been submitted electronically to SACAA for processing.

25 The aforementioned order was, however, for reasons that are not known to the applicant, later repealed by the third respondent in a further Ministerial Order published in Government Gazette 51203 in Government Notice 2720 of 2024 on 10 September 2024. In terms of this notice all administrative work, including payment and receipt of money as well as secretarial work, in connection with the performance of the functions or exercise of the powers of the Councils, shall be carried out by the Department of Transport. The notice further informs the public that applications and supporting documents are to be submitted to the Department of Transport via the nominated e-mail addresses. The said order, published on 10 September 2024, came into effect on 1 October 2024.

Fourth respondent

26 The fourth respondent is the Director-General of the Department of Transport, cited in this matter due to the regulatory interest of the Department in the licensing and operation of air services, and in accordance with the various functions of the Director-General outlined in the Act, including to the extent necessary, the administrative functions in the Ministerial Order. Address for service, Department of Transport, 159 Struben Street Forum Building, Pretoria.



Fifth respondent

27 The fifth respondent is the South African Civil Aviation Authority (SACAA), an agency of the Department of Transport, cited for its interest in this matter, established on 01 October 1998, following the enactment of the now repealed South African Civil Aviation Authority Act, 1998 (Act No. 40 of 1998), which was replaced by the Civil Aviation Act, which came into effect on 31 March 2010, and provides for the establishment of a stand-alone authority, mandated with controlling, promoting, regulating, supporting, developing, enforcing, and continuously improving levels of safety and security throughout the civil aviation industry. As outlined in the Public Finance Management Act, ("PFMA"), (No. 1 of 1999), (as amended by Act No. 29 of 1999), the SACAA is a Schedule 3A public entity. The PFMA designates the SACAA's board of directors as the organisation's Accounting Authority, which is responsible for governance, while the Minister is the Executive Authority.

Standing

28 Sakeliga has standing to bring this application by virtue of section 38 (a) of the Constitution, acting in its own interest in accordance with its respective objectives. It also brings this application in the interest of a group or class of persons in terms of section 38 (c) of the Constitution, specifically its supporters and members affected by the policy and action of the first respondent as discussed in this affidavit. Furthermore, Sakeliga brings this application in the public interest in terms of section 38 (d) of the Constitution.

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29 Sakeliga advocates for the rule of law in South Africa. A robust and transparent legal framework is essential for creating a conducive environment for businesses to thrive. Sakeliga emphasizes the importance of legal certainty, fair and impartial judicial and administrative processes, as foundational elements of the rule of law.

30 The doctrine of legal certainty finds practical expression at the level of rands and cents in those sections of the bureaucracy that interact at the adjudicatory level with private and international businesses. Clear and consistent regulatory regimes are crucial for businesses to operate effectively, make informed decisions, and contribute to economic growth. Sakeliga emphasizes the importance of minimizing regulatory complexity, avoiding harmful policy changes, and ensuring that regulations are transparent, predictable, and fair.

31 Regulatory certainty encourages investment, innovation, and job creation by providing businesses with a stable and conducive environment in which to operate.

Summary

32 There is evidence that the first respondent, through a pattern of unlawful *ad hoc* procedures and orchestrated policies seeking to introduce race-based criteria as part of licensing requirements under the Act, is influencing decision-making within the first respondent regarding license applications.

33 The conduct of the first respondent in 1) demanding the submission of transformation plans, 2) the making of race-based commitments by applicants regarding transformation and their ownership structures and 3) setting race-based criteria as relevant criteria for the consideration of an application under the Act, is prejudicing current and aspiring aviation operators.

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34 The conduct complained of apparently stems from a decision or series of decisions taken by the first respondent to inject race-based or transformation requirements (seemingly in terms of section 10(1) of the BBEE-Act) into all the first respondent's licensing operations under the Act.

35 Complaints pertaining to the above were made known to Sakeliga by various established industry role players and prospective licensee applicants during or about December 2023.

36 A climate of prejudicial uncertainty has seemingly become the norm in the industry, with applicants complaining of public hearings becoming the forum through which the first respondents set arbitrary targets for different applicants regarding the racial make-up of the ownership structures. Sakeliga has received several reports indicating that members of the first respondent are making threats regarding the approval of licenses. Specifically, applicants may face

refusal of new applications or renewal of existing licenses if they cannot commit to either implementing a transformation plan or making other promises related to the restructuring of their ownership structures during the application process.

37 The purpose of this application, inter alia, is to seek an order declaring the impugned conduct of the first respondent unlawful and unconstitutional insofar as such respondent introduces into the statutory licensing regime, which regime simply does not provide for consideration of requirements outside the four corners of the applicable statute, additional race-based and transformation requirements for the issuing of licences.

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38 It is Sakeliga's case that the implementation of such a policy, which clearly is not contained in the statute governing the relevant licence applications, comprises an *ultra vires* exercise and, therefore, falls to be declared unlawful and set aside, to the extent necessary. To the extent that requirements are introduced extraneous to the applicable legislation on an ad hoc arbitrary basis or otherwise, such a procedure would also fall foul of the most basic tenets of the rule of law.

39 The conduct complained of is compounded by the failure of the first respondent to engage in good time and faith, openly and transparently, to even indicate on record whether the impugned policies and practices are indeed being employed.

40 The legal representatives of Sakeliga requested confirmation through formal correspondence whether it was accurate that race-based black economic empowerment considerations played a role in the issuing of airline licences. This was done on 18 December 2023 and again on 29 January 2024. A copy of this correspondence is attached hereto as **FA3** and **FA4**. No response of any substance was received either confirming or denying whether considerations

outside of those contained in the statute and regulations played a role in the issuing of licences. Despite demand, the first respondent was unable and unwilling to provide a substantive legal basis for its impugned conduct. It is unclear why a "cloak and dagger" type approach was adopted by the first respondent when confronted with questions as to 1) the legality of its policy and 2) the exact criteria which it currently applies to license applications, specifically regarding the incorporation of race-based black economic empowerment requirements regarding the applicant entity applying for a license to operate.

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41 This situation is quite unusual and puts potential license applicants at a significant disadvantage. No one actually knows exactly what the requirements for a successful license application would be, especially regarding the racial composition and structure of an applicant entity, as the 'rules' are made up as the application goes along and depending upon the level of willingness to comply which the first respondent receives from participants.

42 Eventually, through correspondence dated 14 May 2024, just short of five months after the initial request was made, the first respondent confirmed that black economic empowerment considerations indeed played a role in the processing of licence applications. It is unclear when this decision was made and when, through its conduct, the policy was implemented.

43 The above decision was pivotally premised on the clearly erroneous conviction that the first respondent comprises an organ of state or a public entity, which is clearly factually and legally incorrect. An error of this magnitude is in itself sufficient to set aside the unlawful impugned conduct and/or policy, as the case may be. A copy of the crucial correspondence is attached as annexure **FA5**.

Statutory framework: Air Services Licensing Act 115 of 1990

Act and Regulations outline

44 The Act governs the licensing of domestic air services in the Republic of South Africa. It, *inter alia*, establishes the first respondent, which entity is responsible for processing and adjudicating applications for air service licenses. The Act mandates that licenses can only be issued if licensee applicants demonstrate the capability to operate services safely and reliably.

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45 Section 3 records that the Council shall be a juristic person and make known its office and postal address by notice in the Gazette.

46 The Act sets residency requirements for license holders, requiring natural persons to be South African residents and non-natural persons to have at least 75% of voting rights held by South African residents.

47 The Act binds the state except as regards its criminal provisions. The first respondent, the Council, as at the date of issuance to the knowledge of the applicant, comprises a chairperson, vice chairperson and three expert members:

47.1 Leroy Musa Nsibande, the Chairperson;

47.2 Raesibe Sharon Kekana, the Vice Chairperson;

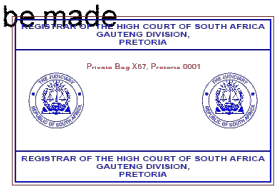
47.3 Rickie Rodger Rennie;

47.4 Zonica Leanda Mtshali;

47.5 Ramovha Emmanuel Mbuwe.

48 The Act further provides for the terms of office of the members; the disqualification of persons from membership of the Council; the remuneration of members; the procedure for meetings held by the Council; the administration and annual reports of the council; and the powers of the Council to compel the attendance of witnesses and the production of documents.

49 No person may operate an air service except in terms of and subject to the conditions of a duly issued license. The Council may issue certain classes of licence. An application for the issue of a licence or its amendment must be made on a prescribed form and must be accompanied by the correct fees.



50 The Act further provides for:

50.1 The processing and adjudication of the application;

50.2 The form and validity of the licence;

50.3 A register of licences;

50.4 The conditions of issue of the licence and the failure of the licensee to comply with the conditions of the licence;

50.5 The surrender of a licence;

50.6 The duties of the licensee;

50.7 Appeals from the decisions of the council;

50.8 Presumptions and evidence;

50.9 Delegation by the director of some of his or her powers;

50.10 The service of documents;

50.11 Offences and penalties.

51 The Minister is given the power to make regulations in respect of certain specified matters. The regulations provide for certain classes and types of service, as well as four categories of aircraft, certain minimum insurance in respect of passenger liability, and third-party liability.

52 In terms of procedure, the regulations provide for:

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52.1 The manner and form of application for a licence;

52.2 The requirements for the operation of an air service in a safe and reliable manner;

52.3 The contents of notices of application;

52.4 Exemptions;

52.5 The forms of temporary licences;

52.6 Licences;

52.7 Surrenders of licences;

52.8 Summons and notification;

52.9 Submission of statistical information.

53 Provision is also made for passenger tickets, airway bills, passenger lists, manner of appeal and advertisements. Annexures A to V to the regulations contain details of the relevant forms.

Licence adjudication criteria

54 Section 16(4) provides that: An application is granted and a licence issued or amended, subject to the provisions of this Act, if the applicant satisfies the council—

> *"(a) that the air service will be operated in a safe and reliable manner;*
>
> *(b) . . . . . .*
>
> *(c) that, subject to the provisions of subsection (5), the applicant—*
>
> *(i) if the applicant is a natural person, is a resident of the Republic; or*
>
> *(ii) if the applicant is not a natural person, is incorporated in the Republic and at least 75 per cent of the voting rights in respect of such person is held by residents of the Republic;*
>
> *(d) that the person referred to in paragraph (c) will be actively and effectively in control of the air service; and*
>
> *(e) that, subject to the provisions of subsection (6), the aircraft which will be used in operating the air service is a South African aircraft as defined in section 1 of the Aviation Act, 1962 (Act No. 74 of 1962)…"*

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55 The criteria for granting or amending an air service license, thus comprises demonstrating safe and reliable operation, meeting residency requirements (for natural and non-natural persons), and ensuring active control of the service, and using South African aircraft as defined by the Aviation Act of 1962.

56 At this point I must note that the Aviation Act of 1962 has been repealed by the Civil Aviation Act 13 of 2009. While the term "South African aircraft" is defined in the Civil Aviation Act, the Act, has not been amended so as to refer to the CAA and not the Aviation Act. This has a bearing on the requirements set in the Act.

Processing of application for permit

57 Section 15 is entitled "Processing of application". Subsection 3 reads as follows:

> *"(3) Any person may address in writing, within 21 days after the publication of the notice referred to in subsection (1), representations in the prescribed manner to the council against or in favour of such application: Provided that those representations shall be founded only on the applicant's ability to comply with the requirements referred to in section 16 (4)."*

58 The use of the word "only" fulfils a restrictive role and reinforces an interpretation that the only relevant requirements are found section 16 (4). It therefore ensures that the feedback provided is limited to the criteria used to evaluate applications, which relevance determined by the above section. To put it otherwise, only concerns about a licensee applicant's compliance with specific requirements in section 16(4) are valid grounds for representations for or against approval.

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59 This implies that factors falling outside of the purview of section 16(4) would not be relevant or considered by the Council when processing the applications made.

Issues animating this application

60 It is submitted upon an analysis of the Act that the overarching consideration in adjudicating applications to operate airline passenger services would properly be safety considerations which would reflect aviation policy good practice. Other considerations would seemingly include a level of domestic-based ownership as part of a statutory liability and corporate governance measure to ensure high levels of public safety and personal responsibility within the jurisdiction of South Africa.

61 The primary mischief that this application is designed to address, however, pertains to the introduction of arbitrary and amorphous additional requirements into the licensing adjudication bucket of considerations. Although the term "black economic empowerment" is often bandied about, in some cases inaccurately, we are faced with a situation where certain hazy putative empowerment policy considerations are being introduced, effectively through the back door, when licensing applications are considered by the council.

62 The problem is exacerbated by the fact that meetings, which are required by the Act for adjudicating license applications and are clearly designated as public, serve as the means through which the impugned policy of the first respondent concerning race-based requirements for license applicants is communicated and enforced. Even more concerning is the apparent moratorium placed by the first respondent on the use of electronic equipment during meetings and the ban on the recording of the public's interactions with the first respondent and its staff. This is problematic for a host of reasons, most jarringly on the principles of open and transparent government and the right of the public to protect themselves against unlawful state action, especially under circumstances where the impugned conduct acts outside of the promulgated frameworks of the law – especially within the context of a statutory body responsible for the management of airline operators who will in most cases become responsible for the lives and safety of the members of the public.

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Concerns raised by role players in the industry

63 Role players in the industry have a clear interest in a fair and functional process administered by the first respondent. To the extent that policy intrusion alien to

the ordinary requirements of airline licence issuing is to be proceeded with at all, this must be done in a transparent manner with the requisite safeguards of certainty, reasonable and rational considerations appropriate to the relevant industry. At a minimum a consultation process will have to be followed. It must also be remembered that the statute as it currently stands deals explicitly with licensing which does not envisage expansive policy intervention in decision-making. It is clear from the wording that the statute was consciously drafted in this manner. It also aligns with similar legislation elsewhere in the aviation world.

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64 As mentioned above, there is also evidence to show that prospective applicants for licences, in terms of the legislation, are being pressured during meetings with members of the council, and that black economic empowerment considerations play a role in the issuing of licences. This is nowhere mandated in the relevant statutory and regulatory framework. This situation also poses a number of problems, not least of which is the ultra vires imposition of potentially irrelevant considerations and the diminishing of relevant considerations in the reaching of the administrative decisions regarding licensing before the first respondent. Such an imposition on the face of it is unlawful.

65 At a practical level, many stakeholders in the industry have a lot at stake, both financially and reputationally. As a result, they are hesitant to openly challenge the operations of the relevant administrative tribunal responsible for approving license applications through court procedures, especially given the current environment. The fear of future victimisation in the processing of their applications before the Council is real. This is one of the reasons why Sakeliga feels obligated to act in the public interest.

66 Proper rule of law-based decisions regarding the ability of airlines to provide safe and sustainable air services cannot be over-emphasised in this application. No compromise can justifiably be made on this score. Divergence from the letter of the law regarding the approval of these types of applications set a dangerous precedent. If nothing else, the fact that the statutory body is spending time in managing and enforcing policies which have not been strictly assigned to them, is of great concern as to the statutory focus of the Council.

67 As discussed in more detail elsewhere, Sakeliga attempted through its legal representatives to obtain documentary clarity insofar as the impugned conduct of the first respondent at its hearings in question are concerned. It is unfortunate that the council seemingly elected to stonewall such efforts, and, no proper responses have been received to two applications in terms of the Promotion of Access to Information Act (PAIA). The failure to assist the public in understanding the conduct and policies of the first respondent is most unfortunate.

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Transparency and fair process during hearings

68 For the purposes of adjudicating applications for licences under the Act, public hearings are held which may be described as "hearings of record". The proceedings forming part of the hearings of record are purportedly recorded, with minutes being made available apparently on request. Although the Council promises to furnish transcripts, participants are expressly forbidden from electronically recording the proceedings.

69 Section 16 (3)(c) provides as follows:

> *"(c) A meeting referred to in paragraph (a) shall be held in public and the parties concerned may appear in person at that meeting or may at their own expense*

be represented by counsel, an attorney or other fully authorized representative."

70 Section (3)(a)(ii) provides:

"that any person referred to in section 15 (3) may appear before the council."

71 Section 8 concerns meetings, the subsections dealing with recording of meetings reads as follows:

"(8) The council shall cause minutes to be kept of every meeting thereof.

(9) The member of the council presiding at a meeting referred to in section 16 (3), shall keep record of the proceedings at such meeting or cause it to be kept.

(10) The minutes and records referred to in subsections (8) and (9), shall be kept at the offices of the council.

(11) Copies of the record referred to in subsection (9), or of any part thereof, may be obtained against payment of the prescribed fee."

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72 It is clear from the above that the meetings statutorily prescribed are public meetings and that there should be no impediment to the recording of proceedings. No proper written reasons for this policy have as yet been provided.

73 There is no reference in the Act on the general use of electronic equipment such as laptops and cell phones during meetings. The embargo on the use of such equipment seems to be a policy wholly developed by the fist respondent's members and imposed during the meetings of the Council.

<u>My meeting experience</u>

74 I was informed by a supporter of Sakeliga that a meeting of the Council was scheduled for 14 May 2024. My colleague, Danielle Esterhuysen, and I arrived at the SACAA's premises in Midrand at 09:00 on that date in order to sit in on the

hearings of the Council. An affidavit from Ms Esterhuysen is attached as annexure **FA6**.

75 However, on attending to the SACAA offices, we were informed that the portion of the Council's meeting addressing license applications would not commence until 11:00. Despite supposedly being 'public' meetings of the Council under the Act, we were only invited into the meeting room shortly after 11:00. The chairperson welcomed us and explained how the process would unfold.

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76 We were informed that making recordings of the meeting proceedings was not allowed. I was also instructed to put away my laptop, which I had intended to use for taking notes. I complied with this request after the chairperson assured us that a recording of the meeting would be made available to Sakeliga.

77 The first applicant to appear at the meeting was a company known as Gemini, which we understood to be a hundred percent black women-owned company. Three representatives from Gemini presented their case, relying on application documents previously submitted to the first respondent. The Council raised several issues concerning Gemini's application. One of the primary concerns was that their B-BBEE certificate had expired. The Council requested that Gemini submit a new, valid certificate.

78 The Council indicated that once all updated documents, including the valid B-BBEE certificate, were submitted, the application would be reconsidered. The Council deferred its decision pending submission of the required documents.

79 The second applicant appearing was a company known as Winlife, a company apparently based in the Western Cape that engages in firefighting services on

farms. Winlife was accompanied by a representative, who dealt with the application on their behalf. Their application, which was submitted under Section 20 of the Act, sought a license to conduct firefighting operations using fixed-wing aircraft. Unlike the Gemini application, the Council did not raise any questions regarding B-BBEE.

80 From my observations, there appears to be an inconsistency in the way the Council addressed B-BBEE "compliance" and/or B-BBEE "requirements". Whilst Gemini was required to submit a valid B-BBEE certificate before their application could proceed, Winlife did not face any inquiry in this regard. The reason for this discrepancy is unclear, but it raises concerns about the uniform application of B-BBEE standards during the first respondent's decision-making process.

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Catastrophic backlog

81 It was reported that there were substantial delays in constituting the Council, for reasons that are not clear, resulting in a period of hiatus where these crucial administrative functions were not being performed."[1] This situation, it has been further reported, created what was described as "a catastrophic backlog". It is in this context that the first respondent is adding unnecessary and indeed unlawful layers to the adjudication process pertaining to airline licences further prejudicing applicants for licences in terms of the Act.

[1] See: https://www.tourismupdate.co.za/article/last-sa-revives-air-councils.

Attempts at resolution without resort to litigation

82 Correspondence was addressed to the first respondent with a view to resolving any issues without having to resort to curial means. Though it was indicated that the first respondent was obtaining legal advice and would respond in due course, no such meaningful response was received in good time in the circumstances.

83 Considering this, Sakeliga requested that the Council confirm the name and contact details of its information officer as well as a copy of its PAIA manual. The first respondent however did not provide the requested information to Sakeliga.

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84 Thereafter application was made by Sakeliga for information in terms of the Promotion of Access to Information Act ("PAIA") process. The request for information was lodged on or about 24 January 2024. attached hereto as **FA7**.

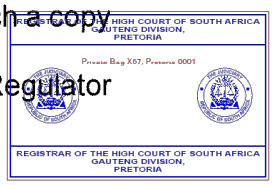
85 The first respondent however did not respond to the request within the prescribed period. Sakeliga thereafter proceeded to lodge a complaint with the Information Regulator, as provided for in PAIA, on or about 19 April 2024. A copy of the complaint is attached as **FA8**. This process is still outstanding. Initially, application was made to the first respondent, however, it was indicated that the appropriate entity for the purposes of information provision was the Minister.

86 Although the relevant statutory and regulatory framework makes clear that the required information should as a matter of law be in the possession of the first respondent, application was duly made for information to the Department of Transport on 17 May 2024. A copy of this request is attached hereto as **FA9**.

87 The Department of Transport also failed to respond to the request for information within the prescribed period in terms of PAIA. As a result, Sakeliga on or about

28 June 2024 delivered its internal appeal in terms of PAIA to the Minister. A copy of the internal appeal is attached hereto as **FA10**.

88 Despite the lodging of the request for information to the Department and subsequent internal appeal to the Minister, no response was provided by the Department or a decision made on the internal appeal by the Minister. Sakeliga, therefore, proceeded to lodge a complaint to the Information Regulator against the Department's failure to respond and Minister's failure to decide on the internal appeal. The complaint was lodged on or about 7 August 2024 and I attach a copy thereof as **FA11**. The process is also pending before the Information Regulator and no ruling or decision has been made yet.



Sakeliga's letter to the first respondent dated 18 December 2023

89 Sakeliga addressed formal correspondence to the first respondent dated 18 December 2023. The correspondence effectively sets out the following to be furnished in the form of an undertaking to be made to Sakeliga:

89.1 That applicants for licences are not required to provide transformation commitments or B-BBEE information beyond what is stipulated in the Act.

89.2 That the Council assures applicants for licences that they will not be pressured to increase their current B-BBEE scores or participate in any transformation schemes.

89.3 That there will be no implications or suggestions that compliance with the aforementioned additional requirements will influence the Council's decision on any application for a licence.

89.4 That applicants for licences will not face penalties in the awarding of licences based on their level of participation in B-BBEE or other transformation objectives.

90 The letter concludes with an indication that Sakeliga reserves its rights to proceed with litigation should the first respondent not comply. A copy of the letter is already attached hereto as **FA3**.

Formal response from first respondent dated 14 May 2024

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91 In answer to the letter from Sakeliga's attorneys dated 18 December 2023, correspondence on behalf of the first respondent dated 14 May 2024 was belatedly after five months received by Sakeliga's attorney of record. The relevant portions of the first respondent's response read verbatim as follows:

> *"We respond to your letter dated 18 December 2023."*
>
> ...
>
> *"Issues of ownership and shareholding structure requirements are provided for in the Air Services licensing Act 15 of 1993 section 16.4 (c) (ii) which states that: (c) that, subject to the provisions of subsection (5), the applicant – (i) if the applicant is a natural person, is a resident of the Republic; or (ii) if the applicant is not a natural person, is incorporated in the Republic and at least 75% of the voting rights in respect of such person is held by residents of the Republican (sic)..*
>
> *[In] relation to BEE and transformation, it must be noted that the ASL Act does not exist in isolation. In the same breath, ASL must always be applied consistently with other relevant pieces of law, both principal and subordinate laws, including the Constitution which states in section 2 that – "This Constitution is the supreme law of the Republic; law conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled."*

92 And further at paragraph 5 of the letter:

"Thus, for purposes of completeness and providing guidance, we highlight the below specific requirements of the B-BBEE Act which are binding on ASL –

5.1 section 10(1)– B-BBEE Act makes it mandatory for all organs of state and public entities to apply the codes of good practice. Consequently, every entity that transacts with organs of state and public entities must comply with B-BBEE requirements. Section 3 (2) B-BBEE Act states that the B-BBEE Act trumps any other legislation on matters covered. The B-BBEE Act is only subject to the limitation clause provided in section 36 of the constitution, in terms of a law of general application of the law is reasonable, justifiable in an open and democratic society.

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5.2. In terms of section 10(1) of the Act, every organ of state and public entity must apply the relevant code of good practice issued by the Minister of Trade and Industry and Competition in accordance with section 9 of the Act in:

5.2.1 Determining qualification criteria for the issuing of licences, concessions or other authorisations in respect of economic activity in terms of any law;

5.2.2 Developing and implementing a preferential procurement policy;

5.2.3 Determining qualification criteria for the sale of state-owned enterprises;

5.2.4 Developing criteria for entering into partnerships with the private sector; and,

5.2.5 Determining criteria for the awarding of incentives, grants and investment schemes in support of B-BBEE.

5.3: "The only time that an Organ of State or public entity is not required to apply section 10(1) of the B-BBEE Act, is when an exemption or deviation provided for under section 10(2) of the B-BBEE Act in relation to section 10 of the B-BBEE Act, has been granted and gazetted by the Minister of Trade, Industry and Competition, and secondly, if it is an institution that is not regarded as an Organ of State or public entity by definition in the B-BBEE Act. Thus, by

operation of law, any qualification criteria for the issuing of licences, concessions or other authorisations in respect of economic activity in terms of any law administered by an organ of state public entity, or to follow the requirements of section 10(1) of the B-BBEE Act.

5.4 failure by ASL to comply with section 10(1) of the B-BBEE Act which lists the criteria for the issuing of licences, violates the provision, including section 9(2) of the constitution as the founding pillar of the B-BBEE Act.

5.5 In addition, we wish to bring to your attention, the below extract from the B-BBEE codes of good practice, which places an obligation on the private sector entities that undertaken economic activity with an organ of state or public entity to apply the B-BBEE Act. In terms of item 3.1 of statement 000 of the codes of good practice to the B-BBEE Act –

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"The following entities are measurable under the Codes:

5.5.1 all Organs of State and Public Entities;

5.5.2 all Measured Entities that undertake any economic activity with Organs of State and Public Entities;

5.5.3 any other Measured Entity that undertakes any economic activity, whether direct or indirect, with any other measured entity that is subject to measurement under paragraph 3.112 3.12 and which are seeking to establish its own B-BBEE compliance.

5.6 therefore, if a private sector entity applies for a licence from ASL and fails to demonstrate compliance with the B-BBEE Act as guided by the relevant codes of good practice, it violates the B-BBEE Act and consequently, the right to equality entrenched in the constitution of the Republic.

6. Air Services Licensing Council will not be in a position to take any instruction from the industry or their representatives.

Legal grounds to attack unlawful decision and conduct

Unlawful (*ultra vires)* decision and conduct, failure of procedural fairness

93 The impugned decision and conduct of the first respondent, are *ultra vires* its powers and offends against the principle of legality. Matters involving the exercise of public power are inherently of a constitutional nature. Everyone is entitled to fair and just administrative action and to equal treatment under the law. The first respondent has failed to adhere to the principles of natural justice, which include providing a fair and unbiased application and hearing process.

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94 Fair process would involve at a minimum notice in good time in respect of which considerations would be relative for the purposes of adjudicating statutory administrative applications. Despite requesting this information, a period of almost 5 months elapsed before the criteria to be considered by the Council were revealed. On the face of it, this clearly comprises a failure of procedural fairness.

95 Arbitrary and capricious decision-making would always be unlawful.

96 Section 172 of the Constitution provides for the powers of Courts in constitutional matters. Section 172(1) (a) provides that a Court must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency. Section 172(1)(b) provides that a Court may make any order that is just and equitable.

97 The first respondent's decision and conduct as set out in this affidavit, will also without much difficulty fit comfortably into several buckets of unlawfulness.

Grounds in terms of PAJA

98 In any event, to the extent that the Promotion of Administrative Justice Act is of application to these proceedings, given in particular the nature of the first respondent and the function that it fulfils in respect of the legislation governing the adjudication and issuing of airline licences, and it being obligated by law to respect the principle of procedural fairness, I am advised that, on the limited information available to me at this stage, that the decision under attack is capable of being reviewed and set aside on one or more grounds contained in of PAJA.

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99 Section 4 of PAJA outlines the rights of individuals to administrative action that is lawful, reasonable, and procedurally fair. It ensures that administrative actions must comply with the law, be based on rational considerations, and follow principles of procedural fairness such as adequate notice, the right to be heard, reasons for decisions, and impartial decision-making. Breaches of these standards entitle individuals to seek remedies under PAJA, promoting transparency, accountability, and the rule of law in administrative processes.

100 Section 6 of PAJA provides grounds for the review of administrative action.

101 In terms of section 6(2)(a), in that: the administrator who took the action was not authorized to do so by the empowering provision; acted under a delegation of power which was not authorized by the empowering provision; was biased or reasonably suspected of bias.

102 In terms of section 6(2)(b), in that a mandatory and material procedure or condition prescribed by an empowering provision was not complied with.

103 In terms of section 6(2)(c), in that the action was procedurally unfair.

104 In terms section 6(2)(d), in that the action was materially influenced by an error of law.

105 In terms of section 6(2)(e), in that the action was taken:

105.1 for a reason not authorized by the empowering provision, for an ulterior purpose or motive;

105.2 because irrelevant considerations were taken into account or relevant considerations were not considered;

105.3 because of the unauthorized or unwarranted dictates of another person or body;

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105.4 in bad faith, arbitrarily or capriciously.

106 In terms of section 6(2)(f)), in that the action itself:

106.1 contravenes a law or is not authorized by the empowering provision;

106.2 is not rationally connected to:

106.2.1 the purpose for which it was taken;

106.2.2 the purpose of the empowering provision;

106.2.3 the information before the administrator, or,

106.2.4 the reasons given for it by the administrator.

107 In terms of section 6(2)(h), in that the exercise of the power or the performance of the function authorized by the empowering provision, in pursuance of which

the administrative action was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function.

108 In terms of section 6(2)(i), in that the action is otherwise unconstitutional or unlawful.

Application to facts

Irrationality of operating outside the prescripts of the applicable legislation

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109 If, such as in the present case, a licensing authority were to consider a licence application based on a consideration outside the statute, this decision would be clearly irrational because it is not based on relevant legal criteria.

Ultra vires conduct and absence of authority

110 The first respondent has now issued what is in effect a policy statement reflecting a decision to include criteria outside that contained in the Act the purposes of adjudicating licence applications. The statement makes clear that the first respondent does not consider itself bound by the four corners of its establishing statute. For a creature of statute in the mould of a licensing authority, such a position is extraordinary. The exercise of public power must happen within the bounds set by the legal framework which established the first respondent.

111 It falls outside the powers of the first respondent to require applicants for licences to address the council on matters not within the purview of the statute which therefore clearly do not call for adjudication.

Consideration of irrelevant material whilst ignoring the relevant grounds

112 The statute also records explicitly that extraneous considerations for the purposes of submissions for or against the issuing of a licence are not permitted.

Failure of rights to fair process

113 The effect of considerations alien to the statute being introduced into the adjudication process, results in a situation where an applicant simply does not know, "which case it has to meet", for the purposes of a successful application.

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114 The prejudice is compounded with such issues put to applicants "on the spot".

115 There is evidence that questions are put to applicants for licences by members of the first respondent on issues outside of the purview of the legislation for the purposes of the application process in circumstances where such process is both unlawful and, in any event, inappropriate. Council questions arising at the meetings are seemingly not put into writing prior thereto.

116 This is not the type of situation justifying an approach where potentially adverse information could be put to a licensee applicant on the spot in an enquiry type process. To reiterate, this is not a case where the length of time given to respond to adverse material may potentially depend on the complexity of the allegations, the evidence, and the circumstances of an investigative type hearing tribunal.

117 Given the purpose of the legislation, there would be absolutely no advantage to the administrative body and the integrity of the licence processing regime, in implementing a policy where salient aspects of the application requirements are not recorded in writing for prior consideration by those entities making

application. Conversely, having applicants for licences to answer council queries "on-the-fly" clearly compromises the rights to procedural fairness.

118 As regards the first respondent impeding participants from recording the proceedings at "public hearings" with such participants' own devices, no proper reasons have been provided in this regard. In the absence of such reasons, it is submitted with respect that recording material at an administrative hearing is a crucial component of procedural fairness. It assists in ensuring that hearings are conducted transparently, accurately, and accountably, thereby protecting the rights of the entities involved, including the decision-makers, as regards potential appeals and reviews, and maintaining the integrity of the administrative process.

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Unlawful dictation and bias

119 To the extent that the Council is acting on a frolic of its own, this should be clarified when the Council is called upon to answer to this case, alternatively the Council is acting under the unlawful dictates of an outside entity, which is both unlawful in addition to threatening the integrity of the process.

Bad faith

120 As indicated, it took almost precisely 5 months for the first respondent to confirm its position. When the applicant requested confirmation of such position, the initial response was that the first respondent was obtaining legal advice. This begs the question when the impugned decision was first introduced into the administrative application proceedings, and concomitantly whether the legal advice as regards lawfulness was obtained before or after its implementation.

121 The substantial delays in responding by the Council to simple direct questions, creates a clear inference of bad faith, in the totality of the circumstances.

Clear material error of law and fact

122 The first respondent through its correspondence makes clear that it regards itself is an organ of state or public entity, and for that reason it is obliged to implement section 10(1) of the Broad-Based Black Economic Empowerment (B-BBEE) Act.

123 First respondent unequivocally commits here a material error of law and fact.

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124 First respondent is neither an organ of state nor a public entity, as defined.

125 Criteria for preferential procurement which stipulates that organs of state or public entities must apply B-BBEE preferences in their procurement processes is clearly not of any application at all in the circumstances of the present matter.

126 It is clear from the applicable legislation, including the statute and regulations, that the adjudication of applications for licences in terms of the Act is unequivocally limited to the requirements recorded in the Act. The Act goes further than ordinary legislation and explicitly records that "only" requirements in section 16 (4) are relevant considerations, for or against approval.

127 Making a determination to the contrary, first respondent commits an error of law.

Legality generally

128 In any event, as indicated to the extent that PAJA is not of application in so far as aspects the relief sought are concerned, the grounds above still find

application in respect of legality and section 172 of the Constitution. In this regard a declaration of unlawfulness is, *inter alia*, the appropriate relief sought.

Impact of the council's conduct on rights and economic investment

129 All have the right to fair and just administrative action, and the equality under law. Section 22 of the South African Constitution guarantees every citizen the right to choose their trade, occupation, or profession freely. Applying for an airline license impacts this right, as it involves the ability to enter and operate within the aviation industry. The right to property under section 25 of the Constitution could be implicated if the denial or delay of an airline license affects the use and enjoyment of property, such as aircraft or facilities owned by a licensee applicant.

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130 Government officials and public institutions are accountable under the law. They must act within their legal powers and can be held accountable for their actions. Section 1(c) of the Constitution of South Africa enshrines the supremacy of the Constitution and the rule of law. Unconstitutional conduct should be set-aside.

131 On the fact pattern recorded above, it is clear that constitutional rights have been violated, and that such violations through the impugned conduct will continue should this Court not grant the relief sought. The first respondent has already indicated that it is not amenable to considering entreaties from Sakeliga.

132 Applicants for licences commit substantial resources which are required for the purposes of acquiring capital and operational capacity for the purposes of making application for licences which applications are designed to comply with the legislation and regulations currently applicable. In circumstances where there are moving goalposts, substantial unavoidable expenditure may prove fruitless.

133 A lack of policy and regulatory certainty will result in reluctance from both domestic and international players investing resources in the industry. In an environment of fine margins, investors would be inclined to "make safer bets". Employment opportunities in the domestic market may be needlessly sacrificed.

Relief sought

134 Section 8 of PAJA deals with remedies and records that the court or tribunal, in proceedings for judicial review in terms of section 6(1), may grant any order that is just and equitable, including orders setting aside decisions, declaratory orders and interdictory relief where necessary.

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PRETORIA

135 The invocation of Section 172(1) of the Constitution empowers courts to declare any law or conduct that is inconsistent with the Constitution invalid to the extent of its inconsistency. This section provides a broad basis for courts to grant appropriate relief when a law or conduct is inconsistent with the Constitution, including the power to issue declaratory orders and interdicts.

136 Orders will be sought:

136.1 reviewing, setting aside, and declaring unlawful, the decision of the first respondent to include as a requirement in adjudicating applications for licences in terms of the Act, the criteria set out in section 10(1) B-BBEE Act.

136.2 to the extent necessary, declaring unlawful the conduct of the first respondent in including as a requirement in adjudicating applications for licences in terms of the act, the criteria set out in section 10(1) B-BBEE Act.

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136.3 to the extent necessary, declaring unlawful the policy and practice of the first respondent in including as a requirement in applications for licences in terms of the act, the criteria set out in section 10(1) B-BBEE Act.

136.4 to the extent necessary, declaring unlawful the conduct of the first respondent in including race-based requirements extraneous to the Act and regulations in adjudicating applications for licences in terms of the Act.

136.5 Declaring unlawful the prohibition imposed by the first respondent on license applicants and attendees from:

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136.5.1 accessing personal electronic devices during public hearings and licencing meetings;

136.5.2 making recordings of any proceedings before or interactions with the first respondent and its staff.

136.6 Ordering that the party and party costs of these proceedings be borne by the first respondent, along with any other respondent opposing the matter, jointly and severally. Costs to include the costs of two counsel (where so employed) on scale C.

137 The first respondent is categorically compromised through its failure to provide straightforward answers to the applicant's enquiries which were made on 18 December 2023. Substantial unnecessary legal proceedings could have been avoided should the first respondent have made clear its position in good time. It is unfortunate that the first respondent elected to proceed in the cloak and dagger

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type fashion. For these reasons it is appropriate that a cost order is issued making clear that such behaviour by such a tribunal attracts a punitive sanction.

138 Costs in the review generally follows the outcome, however, with the proviso that should the applicant be unsuccessful, a costs order in the form of that granted in the *Union of Refugee Women* case, alternatively the *Biowatch* case type order should be awarded. The applicant should not be out of pocket for furthering constitutional rights, given the substantial expenses involved. Sakeliga has approached this litigation with the utmost good faith and has attempted to exhaust all possible avenues through various pre-curial procedures as is clear.

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Rule 53 record

139 In terms of rule 53 of the Uniform Rules, the first respondent is required to provide justification for its decisions and to despatch to the registrar of this Court, the record of all materials relating to the impugned policy and conduct of the first respondent. As a public body with administrative powers, the first respondent is also under a specific duty to explain and provide its reasons for the decision before the applicant is required to file supplementary affidavits.

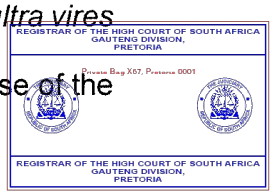
140 For sake of clarity, the applicant seeks record and reasons regarding 1) the policy and conduct of the first respondent in including race-based criteria, alternatively criteria under section 10(1) of the BBEE-Act in the consideration of air service licenses under the Act, and 2) the prohibition placed by the first respondent on participants and attendees from having access to their personal electronic equipment (such as laptops and cell phones) and electronically recording proceedings under the Act, as more fully set out in the affidavit above.

141 The applicant is entitled to amend its notice of motion and supplement this founding affidavit once the rule 53 record has been filed.

Conclusion

142 The first respondent's purpose aligns with ensuring safe and efficient air services and it simply does not fall within the definition of a public entity under the B-BBEE Act, to which section 10 of that statute could conceivably apply.

143 The imposition of considerations extraneous to the legislation is clearly *ultra vires* the empowering legislation and beyond the proper governmental purpose of the first respondent.



144 Sakeliga respectfully seeks relief as per the notice of motion, or such just and equitable relief as the Court deems meet in the circumstances.

Wherefore: the applicant seeks an order as per the notice of motion.

TOBIAS VIVIAN ALBERTS

The Deponent has acknowledged that the deponent knows and understands the contents of this affidavit, which was signed and1 sworn to before me at ...Pretoria..... on this the .12. day of November 2024, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

COMMISSIONER OF OATHS

ANRICH MALAN OTTO
Commissioner of Oaths
HB Forum
13 Stamvrug Street
Val De Grace
Ex Officio Practising Attorney
Republic of South Africa

FA1

SAKELIGA NPC
REG: 2012/043725/08

DELEGATION OF AUTHORITY

I the undersigned

PIETER JACOBUS LE ROUX

hereby delegate to **TOBIAS VIVIAN ("TIAN") ALBERTS**, the following powers and authority:

1) The authority to authorise and/or institute on behalf of Sakeliga, such further legal proceedings which may include urgent proceedings, against the **Air Service Licensing Council ("ASLC") and such further parties as may be necessary**, which includes but is not limited to appeals and/or reviews of any matter related thereto, and/or the right to have Sakeliga appear, argue, act, support and/or oppose any matter before any state authority or judicial body in furtherance of this delegation.

2) the authority to represent Sakeliga in all matters referred to in paragraph 1) above, and to sign any document on behalf of and in the name of Sakeliga as its lawful representative.

3) the authority to incur costs on behalf of Sakeliga and to appoint, instruct and direct attorneys, experts and/or consultants to assist Sakeliga with any matters relating to paragraph 1) above.

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SIGNED AT PRETORIA ON 6 NOVEMBER 2024

Pieter J le Roux (Nov 6, 2024 09:20 GMT+2)
PIETER JACOBUS LE ROUX - CEO

SAKELIGA

FA2

hierdie Akte waar hy moontlik verplig sou wees of daartoe geregtig sou raak om kragtens hierdie Akte iets te doen of nie te doen wat strydig is met die Wet nie, in sovêr as wat die handeling of omissie teenstrydig is met of `n oortreding is van die Wet.

3.3. Die Direksie is verplig om enige kennisgewing of klagte wat kragtens paragrawe 3.1 en 3.2 ontvang word:

3.3.1. Te ondersoek ten einde die omvang en bestek van die beweerde teenstrydigheid en/of oortreding te bepaal;

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3.3.2. Waar nodig onafhanklike regsadvies te bekom ten einde die oortreding en/of teenstrydigheid effektiewelik aan te spreek, en

3.3.3. Die aksies neem wat binne hul uitsluitlike diskresie nodig is om die oortreding, botsing en/of teenstrydigheid aan te spreek, wat insluit maar nie beperk is tot die voorstel van wysigings tot die Akte en die belê van 'n spesiale Vergadering van die Raad ten einde daardie wysigings goed te keur.

4. DOELSTELLINGS EN MAGTE VAN DIE MAATSKAPPY

4.1. Ter nakoming van artikel 1 van bylaag 1 tot die Wet, verklaar die Maatskappy hiermee die volgende hoofdoelstellings:

4.1.1. Die bevordering van konstitusionele orde, eiendomsreg, vryemarkbeginsels en 'n kapitaalkragtige, regverdige, en volhoubare sake-omgewing in die openbare belang;

4.1.2. Die skepping van selfstandige sakegemeenskappe en 'n gunstige sakeomgewing oor die algemeen;;

4.1.3. Om, sonder inperking, bydraes en skenkings te doen tot verdienstelike sake op onderwysgebied en andersins;

4.1.4. Om in eie naam, namens Lede, ondersteuners en die publiek met Owerhede te onderhandel en verhoudinge met Owerhede asook plaaslike, nasionale en internasionale instellings, ondernemings en persone te beding te einde die doelstellings van die Maatskappy te bevorder;

4.2. Die Maatskappy verklaar hiermee die volgende aanvullende doelstellings, maar sonder inperking van die algemene aard van die Maatskappy hoofdoelstellings:

SAKELIGA

4.2.1. Om as 'n openbare sakewaghond wat fokus op die regte en belange van sy Lede, ondersteuners en lede van die publiek in die algemeen, op te tree;

4.2.2. Om ondersoek in te stel oor gevalle waar die regte van Lede, ondersteuners asook die publiek oor die algemeen, geskend en/of ingeperk word, en om waar nodig ook op te tree ten einde daardie regte te beskerm of te bevorder;

4.2.3. Om oor die algemeen gevalle en sake wat die openbare belang raak, of wat die openbare belang bevorder, soos wat die maatskappy nodig ag, te ondersoek, te bevorder, aan te spreek, uit te bou, aan te veg, te opponeer, teen te staan, te verdedig of tot stand te bring.

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4.3. Die volgende magte word ook, sonder inperking van die algemene magte van die Maatskappy soos uitgeoefen deur die Direksie kragtens die Wet, aan die Maatskappy verleen:

4.3.1. Om deur selfregulering en privaat institusionele infrastruktuur selfstandige sake-omgewings te skep waarbinne ekonomiese aktiwiteit voortgesit kan word;

4.3.2. Om die Maatskappy se Lede, ondersteuners en lede van die publiek in die uitoefen van hul belange en regte, hetsy op plaaslike, nasionale of internasionale vlak, by te staan, te adviseer, te ondersteun en/of te verteenwoordig;

4.3.3. Om die publiek oor die algemeen by te staan met die bevordering van hul regte op `n plaaslike, nasionale en internasionale vlak;

4.3.4. Om 'n vrye, onafhanklike en gunstige sake-omgewing te beskerm, stimuleer en waar nodig te skep;

4.3.5. Om oor die algemeen regsgedinge in te stel, daartoe toe te tree, om sake te opponeer en/of te verdedig, om as *amicus curiae* in sake op te tree, deel te neem aan appèlle, hersienings, en om voor enige Owerheid, hof, tribunaal, kommissie, bedingingsraad, en/of forum (van enige aard) te verskyn, regsdokumente voor te berei, submissies te maak, te argumenteer, op te tree, teen te staan en/of te ondersteun.

4.3.6. Om met die Owerhede, politieke partye, lede van die sakewêreld, die media asook enige ander lid van die publiek te kommunikeer, te onderhandel, in debat te tree en om ook waar nodige daardie persone en/of instansies te voorsien met voorstelle, vertoë, submissies, verslae, argument, teenstand, en/of inligting.

SAKELIGA

4.3.7. Om navorsing ter bevordering van hierdie doelstellings te doen asook om inligting in te samel, statistiek op te bou, inligting te stoor, te verwerk en te publiseer;

4.3.8. Om onafhanklike regsadvies oor enige saak wat enige doelstelling van hierdie Akte raak, te bekom en waar nodig om ook regsverteenwoordiging aan te stel om die Maatskappy te verteenwoordig in die bevordering van hierdie doelstellings.

4.3.9. Om met ander organisasies of persone met soortgelyke doelstellings te onderhandel, ooreenkomste te sluit, projekte te doen, sake te bevorder, befondsing te voorsien, befondsing te ontvang, ondersteuning te bied en/of te affilieer.

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4.3.10. Om deel te neem in die bestuur, beheer of aktiwiteite van enige ander organisasie wat soortgelyke doelstellings as die van die Maatskappy het en om in hulle te belê, belange te bekom en/of om vennootskappe of samewerkingsooreenkomste met hulle aan te gaan.

4.3.11. Om enige persoon of organisasie te vergoed vir hul dienste gelewer aan of namens die Maatskappy.

4.3.12. Om skenkings te maak en te ontvang;

4.3.13. Om eiendom te bekom, te huur, te besit en/of te vervreem.

4.3.14. Om intellektuele goedere en/of enige ander bate ten behoewe van die Maatskappy te bekom, te ontwikkel of te huur;

4.3.15. Om fondse te ontvang, op te bou, te belê, te bestuur en te gebruik;

4.3.16. Om oor die algemeen, binne die uitsluitlike diskresie van die Direksie, wat ook 'n wye diskresie is om die Maatskappy te bestuur, te administreer en tot voordeel van Lede en sy doelstellings uit te bou, te handel.

5. WYSIGING VAN AKTE EN DOELSTELLINGS

5.1. Die Direksie sal nie die bevoegdheid hê om hierdie Akte te wysig nie.

5.2. Hierdie Akte mag slegs met 'n spesiale meerderheid op 'n Vergadering van die Raad gewysig word.

FA3

KRIEK WASSENAAR & VENTER INC
PROKUREURS - ATTORNEYS

Our ref: PJ Wassenaar/ QB1184
Your ref:

18 December 2023

THE AIR SERVICE LICENSING COUNCIL
c/o DEPARTMENT OF TRANSPORT
FORUM BUILDING
159 STRUBEN STREET
PRETORIA

By e-mail: DomesticCouncil@dot.gov.za
NembudaP@dot.gov.za

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PRETORIA

Sir / Madam

In re: Air Service Licensing Council - legality of inclusion of B-BBEE and transformation requirements during consideration of Domestic Air Service License Applications

1. We act on behalf of Sakeliga NPC, a non-profit business interest organisation with supporters across various industries in South Africa. Our client is raising concerns about the Air Service License Council's (Council) practices in licensing air services.

2. Sakeliga's supporters in the air services industry report undue pressure from the Council. Instead of focusing on ensuring safety and reliability in the provision of air services, the Council has seemingly started to emphasise ownership structures, commitment to transformation, and adherence to broad-based black economic empowerment (B-BBEE) principles during license applications.

3. Operators are apparently required to submit a transformation plan and commit to improving their B-BBEE scores, seemingly as part of their licensing applications. Operators have reported council members criticising corporate structures, regardless of current participation in empowerment schemes.

4. Furthermore, it seems that Council members have implied that an applicant's license approval hinges on an applicant's transformation commitments. Operators have apparently been warned that non-compliance with B-BBEE and a refusal to set and meet acceptable transformation commitments will negatively affect future applications.

5. Upon review of the relevant legislation and regulations, we have found no authorisation for the Council's self-arrogated power to demand transformation commitments or information regarding B-BBEE. These threats, whether explicit or implied, fall wholly outside of the scope and objects of the Act.

6. Sakeliga insists that there is no legal justification for the Council to request information beyond the Act's section 16(4) license criteria.

7. We have been instructed to demand that the Council:

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7.1 refrain from demanding transformation commitments and B-BBEE information from applicants applying for a license under the Air Service Licensing Act 115 of 1990;

7.2 provides an undertaking that it will not pressure applicants applying for a license under the Air Service Licensing Act 115 of 1990, to increase their current B-BBEE scores, or to participate in any transformation schemes created or considered by Council;

7.3 refrain from, directly or indirectly, implying to applicants that they should comply with any of the matters discussed in paragraphs 7.1 and 7.2 above, or that compliance with such demands will be taken into account by the Council when making a decision on any application before it under the Act;

7.4 provides an undertaking that it will not penalise an applicant in the awarding of any license because of an applicant's level of participation in B-BBEE or any other transformation objectives considered by the Council or its members.

8. We request a response by **5 January 2023**. Failing thereto, our client will have no choice but to conclude that the Council will be persisting with the aforementioned conduct, which our client deems to be *ultra vires*, unconstitutional and unlawful. Our client's right to approach the court for urgent and/or other relief remains strictly reserved.

Yours faithfully,

KRIEK WASSENAAR & VENTER ING
Péter Wassenaar – Director
(e) peter@kriekporek.co.za

FA4

KRIEK WASSENAAR & VENTER ING
PROKUREURS - ATTORNEYS

Our ref: PJ Wassenaar/ QB1184
Your ref:

29 January 2024

THE AIR SERVICE LICENSING COUNCIL
c/o DEPARTMENT OF TRANSPORT
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159 STRUBEN STREET
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PRETORIA

By e-mail: MotauM@dot.gov.za

Sir / Madam

SAKELIGA NPC / AIR SERVICE LICENSING COUNCIL

1. We refer to your letter in reply to our client's letter of 18 December 2023, dated 25 January 2024, in which you note the referral of our letter to your legal representatives for advice.

2. Our client has not received a response to our letter of 18 December 2023, nor any indication of a prospective date for such response.

3. We hereby demand a reply no later than 29 February 2024.

4. In the absence of a response by the stipulated deadline, we shall construe such failure as an admission of the allegations outlined in our previous communication and shall advise our client on potential legal challenges to the conduct and policies of the ASLC.

Yours faithfully,

KRIEK WASSENAAR & VENTER ING
PETER WASSENAAR – DIRECTOR

www.kwv-inc.com
(t) (+27) 12 756 7566• (f) (+27) 86 596 8799 (a) 3rd Floor, HB Forum Building, 13 Stamvrug Road, Val de Grace, Pretoria 0184
(p) Postnet Suite # 11, Privaatsak / Private Bag X025, Lynwood Ridge, 0040 • BTW Reg: 4020260685

Direkteure/ Directors: Johan Kriek (B Proc, LLM), Péter Johannes Wassenaar (LLB)
Bygestaan deur/assisted by Tertia Johanna Wassenaar (LLB), Kayla Dames (Bcom LLB), Rohann Eloff (Bcom LLB), Melissa Jansen van Vuuren (LLB);
Konsultante / Consultants: Catherina Elizabeth Pienaar (BA, BCur, LLB, LLM, PhD) , Sylvia Adriana Venter (LLB)
• Reg: 2012/030418/21
Docdate 20230302

FA5

AIR SERVICES LICENSING COUNCIL

Private Bag X73,
Halfway House, 1685
16 Treur Close, Waterfall Park,
Bekker Street
Midrand

ASLapplication@caa.co.za

TO: KRIEL WESSENAAR & VENTER ING
Peter Wessenaar

REF: Response to Ref PJ Wassenaar/QB1184

RES NO: N/A
ENQUIRIES: Mr. Leroy Musa Nsibande
TEL: (011) 545 1216
EMAIL: ASLapplication@caa.co.za
DATE: 14 May 2024

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Dear Mr. Peter Wessenar

RE: RESPONSE TO YOUR LETTER REF PJ WESSENAAR/QB1184

1. We respond to your letter dated 18 December 2023

2. In your letter you have indicated that you act on behalf of your clients. Reading through the sequence of your request there seem to be a material fact around the complaint.

3. We therefore request the Delegation of Authority for the entities that are represented.

4. We further request that you furnish us with the allegations regarding this matter from the entities that are represented.

Issues of ownership and shareholding structure are requirements provided for in the Air Services Licensing (ASL) Act 115 of 1993 section 16.4(c)(ii) which states that:

> (c) that, subject to the provisions of subsection (5), the applicant—
> (i) if the applicant is a natural person, is a resident of the Republic; or
> (ii) if the applicant is not a natural person, is incorporated in the Republic and at least 75 per cent of the voting rights in respect of such person is held by residents of the

Republican relation to BEE and Transformation, it must be noted that the ASL Act does not exist in isolation. In the same breath, ASL must always be applied consistently with other relevant pieces of law, both principal and subordinate laws, including the Constitution which states in section 2 that –

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

Council Secretariat:
Ms Patricia Mantsina (Secretary of Council) – Mr. Macdonald Motau (Secretary of Council) - Mr. Andries Nijana (Deputy-Director: Licensing & Permits)

"This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled ".

5. Thus, for purposes of completeness and providing guidance, we highlight the below specific requirements of the B-BBEE Act which are binding on ASL -

5.1 Section 10(1) of the B-BBEE Act makes it mandatory for all Organs of State and public entities to apply the Codes of Good Practice. Consequently every entity that transacts with Organs of State and public entities must comply with B-BBEE requirements. Section 3(2) of the B-BBEE Act states that the B-BBEE Act trumps any other legislation on matters covered. The B-BBEE Act is only subject to the limitation clause provided for in section 36 of the Constitution, in terms of a law of general application if the law is reasonable, justifiable in an open and democratic society.

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5.2 In terms of section 10 (1) of the B-BBEE Act, every Organ of State and public entity must apply the relevant Code of Good practice issued by the Minister of Trade, Industry and Competition in accordance with section 9 of the B-BBEE Act in: -

5.2.1 **Determining qualification criteria for the issuing of licences, concessions or other authorisations in respect of economic activity in terms of any law;**
5.2.2 Developing and implementing a preferential procurement policy;
5.2.3 Determining qualification criteria for the sale of state-owned enterprises;
5.2.4 Developing criteria for entering into partnerships with the private sector; and
5.2.5 Determining criteria for the awarding of incentives, grants and investment schemes in support of B-BBEE.

5.3 The only time that an Organ of State or public entity is not required to apply section 10 (1) of the B-BBEE Act, is when an exemption or deviation provided for under section 10 (2) of the B-BBEE Act in relation to section 10 of the B-BBEE Act, has been granted and gazetted by the Minister of Trade, Industry and Competition, and secondly, if it is an institution that is not regarded as an Organ of State or public entity by definition in the B-BBEE Act. Thus, by operation of law, any qualification criteria for the issuing of licences, concessions or other authorisations in respect of economic activity in terms of any law administered by an Organ of State or public entity, ought to follow the requirements of section 10(1) of the B-BBEE Act.

5.4 Failure by ASL to comply with section 10(1) of the B-BBEE Act which lists the criteria for the issuing of licences, violates the provision, including section 9(2) of the Constitution as the founding pillar of the B-BBEE Act.

5.5 In addition, we wish to bring to your attention, the below extract from the B-BBEE Codes of Good Practice, which places an obligation on the private sector entities that undertake an economic activity with an Organ of State or public entity to apply the B-

Council Members
Mr. Musa Nalbandi (Chairperson) - Ms Raesibe Kekana (Vice-Chairperson) - Mr. Riddle Rennie (Council Member)
Ms Leanda-Marsha Mishali (Council Member) - Mr. Emmanuel Mbowe (Council Member)
Council Secretariat
Ms Patricia Mandama (Secretary of Council) – Mr. Macdonald Motau (Secretary of Council) - Mr. Andries Ntjane (Deputy Director: Licensing & Permits)

BBEE Act. In terms of item 3.1 of Statement 000 of the Codes of Good Practice to the B-BBEE Act -

"The following Entities are measurable under the Codes:
5.5.1 all Organs of State and Public Entities;
5.5.2 all Measured Entities that undertake any economic activity with all Organs of State and Public Entities;
5.5.3 any other Measured Entity that undertakes any economic activity, whether direct or indirect, with any other Measured Entity that is subject to measurement under paragraph 3.1.1 to 3.1.2 and which is seeking to establish its own B-BBEE compliance.".

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5.6 Therefore, if a private sector entity applies for a licence from ASL and fails to demonstrate compliance with the B-BBEE Act as guided by the relevant Codes of Good Practice, it violates the B-BBEE Act and consequently, the right to equality entrenched in the Constitution of the Republic.

6. Air Services Licensing Council will not be in a position to take any instruction from the industry or their representatives.

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

Yours sincerely,
AIR SERVICES LICENSING COUNCIL

Per:

Mr. Musa Nsibande
Chairperson

Ms Raesibe Kekana
Vice-Chairperson

Mr. Rickie Rennie
Council Member

CC:

Mr. Tshitshi Phewa
Acting Deputy Director: Department of Transport

Ms Elizabeth Mpye
Chief Director: Aviation: Department of Transport

Council Members
Mr Musa Nsibande (Chairperson) - Ms Raesibe Kekana (Vice-Chairperson) - Mr. Rickie Rennie (Council Member)
Ms Leanda-Marsha Mtshali (Council Member) - Mr. Emmanuel Mbuwe (Council Member)
Council Secretaries
Ms Patricia Mantsina (Secretary of Council) – Mr. Macdonald Motau (Secretary of Council) - Mr Andries Ntjane (Deputy-Director: Licensing & Permits)

FA6

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: _____

In the matter between:

SAKELIGA NPC	Applicant
and	
AIR SERVICE LICENSING COUNCIL	First Respondent
LEROY MUSA NSIBANDE N.O	Second Respondent
MINISTER OF TRANSPORT	Third Respondent
DIRECTOR-GENERAL: THE DEPARTMENT OF TRANSPORT	Fourth Respondent
SOUTH AFRICAN CIVIL AVIATION AUTHORITY	Fifth Respondent

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GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

CONFIRMATORY AFFIDAVIT

I, the undersigned,

DANIELLE ESTERHUYSEN

do hereby state under oath as follows:

1 I am adult female employed as legal assistant with the applicant.

2 The facts deposed to are within my personal knowledge unless otherwise indicated and are to the best of my knowledge both true and correct.

3 KWV is the applicant's attorney of record in the application in the above Honourable Court.

4 I have read the founding affidavit of **TOBIAS VIVIAN ALBERTS** and I confirm the correctness of the contents of the affidavit as far as it relates to me and KWV.

DANIELLE ESTERHUYSEN

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I hereby certify that the deponent has declared that the deponent understands and knows the contents of this affidavit and that to the best of the deponent's knowledge and belief it is the truth, which affidavit has been signed and sworn to before me at Pretoria on this 12th day of November **2024**, and that the provisions of the Regulations contained in Government Notice R 1258 of the 21st July, 1972, (as amended) and Government Notice R1648 on the 18th August 1977 (as amended) have been complied with.

COMMISSIONER OF OATHS

ANRICH MALAN OTTO
Commissioner of Oaths
HB Forum
13 Stamvrug Street
Val De Grace
Ex Officio Practising Attorney
Republic of South Africa

FORM 2

FA7

REQUEST FOR ACCESS TO RECORD

[Regulation 7]

NOTE:

1. *Proof of identity must be attached by the requester.*
2. *If requests made on behalf of another person, proof of such authorisation, must be attached to this form.*

TO: The Information Officer
Air Services Licensing Council
Forum Building
cnr Bosman and Struben Streets
Pretoria
(Address)

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E-mail address: NembudaP@dot.gov.za DomesticCouncil@dot.gov.za

Fax number:

*Mark with an **"X"***

☐ Request is made in my own name ☒ Request is made on behalf of another person.

PERSONAL INFORMATION				
Full Names	Rohann Eloff			
Identity Number	9603075049082			
Capacity in which request is made *(when made on behalf of another person)*	Attorney of record for Sakeliga NPC			
Postal Address	HB Forum Building, 13 Stamvrug Street, Val de Grace, Pretoria			
Street Address	HB Forum Building, 13 Stamvrug Street, Val de Grace, Pretoria			
E-mail Address	rohann@kriekprok.co.za			
Contact Numbers	Tel. (B):	012 803 4719	Facsimile:	
	Cellular:	012 803 4719		
Full names of person on whose behalf request is made *(if applicable)*:	Sakeliga NPC			
Identity Number	Reg No: 20120437508			
Postal Address	416 Kirkness St, Arcadia, Pretoria, 0007			

Street Address	416 Kirkness St, Arcadia, Pretoria, 0007			
E-mail Address	t.alberts@sakeliga.co.za			
Contact Numbers	Tel. (B)	012 803 4719	Facsimile	
	Cellular	012 803 4719		

PARTICULARS OF RECORD REQUESTED

Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located. (If the provided space is inadequate, please continue on a separate page and attach it to this form. All additional pages must be signed.)

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Description of record or relevant part of the record:	See Annexure A attached hereto
Reference number, if available	QB1184
Any further particulars of record	See Annexure A attached hereto

TYPE OF RECORD
(Mark the applicable box with an "X")

Record is in written or printed form	X
Record comprises virtual images *(this includes photographs, slides, video recordings, computer-generated images, sketches, etc)*	X
Record consists of recorded words or information which can be reproduced in sound	X
Record is held on a computer or in an electronic, or machine-readable form	X

A A

FORM OF ACCESS *(Mark the applicable box with an "X")*	
Printed copy of record *(including copies of any virtual images, transcriptions and information held on computer or in an electronic or machine-readable form)*	X
Written or printed transcription of virtual images *(this includes photographs, slides, video recordings, computer-generated images, sketches, etc)*	
Transcription of soundtrack *(written or printed document)*	
Copy of record on flash drive *(including virtual images and soundtracks)*	X
Copy of record on compact disc drive*(including virtual images and soundtracks)*	
Copy of record saved on cloud storage server	

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MANNER OF ACCESS *(Mark the applicable box with an "X")*	
Personal inspection of record at registered address of public/private body *(including listening to recorded words, information which can be reproduced in sound, or information held on computer or in an electronic or machine-readable form)*	
Postal services to postal address	
Postal services to street address	
Courier service to street address	
Facsimile of information in written or printed format *(including transcriptions)*	
E-mail of information *(including soundtracks if possible)*	X
Cloud share/file transfer	X
Preferred language *(Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available)*	E

PARTICULARS OF RIGHT TO BE EXERCISED OR PROTECTED *If the provided space is inadequate, please continue on a separate page and attach it to this Form. The requester must sign all the additional pages.*	
Indicate which right is to be exercised or protected	Public interest and Constitutional right to information.
	See Annexure A attached hereto.

Explain why the record requested is required for the exercise or protection of the aforementioned right:	Public interest and Constitutional right to information. See Annexure A attached hereto.

FEES	
a) A request fee must be paid before the request will be considered. *b) You will be notified of the amount of the access fee to be paid.* *c) The fee payable for access to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.* *d) If you qualify for exemption of the payment of any fee, please state the reason for exemption*	
Reason	

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You will be notified in writing whether your request has been approved or denied and if approved the costs relating to your request, if any. Please indicate your preferred manner of correspondence:

Postal address	Facsimile	Electronic communication *(Please specify)*
		rohann@kriekprok.co.za

Signed at Pretoria this 24th day of January 20 24

Signature of Requester / person on whose behalf request is made

---

FOR OFFICIAL USE

Reference number:	
Request received by: (State Rank, Name And Surname of Information Officer)	
Date received:	
Access fees:	
Deposit (if any):	

Signature of Information Officer

ANNEXURE A – INFORMATION REQUESTED IN TERMS OF PAIA

INTRODUCTION

1 The requester is a non-profit company and business interest organisation. The requester's main objectives are protecting constitutional rights, constitutional order, the rule of law, and a just and sustainable business environment within South Africa.

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2 The requester believes that the disclosure of the records, as set out below, would reveal evidence of substantial contravention of, or failure to comply with the law, and specifically the legislation mentioned below.

ABBREVIATIONS AND DEFINITIONS

3 Abbreviations and definitions used in this annexure:

3.1 **ASLA** means the Air Services Licensing Act 115 of 1990.

3.2 **ASLC** means the Air Service Licensing Council of South Africa, a juristic person created terms of section 3(1) of the ASLA.

3.3 **BEE** means broad-based black economic empowerment as per the Broad-Based Black Economic Empowerment Act 53 of 2003.

3.4 **Department** means the Department of Transport.

3.5 **PAIA** means the Promotion of Access to Information Act 2 of 2000.

REQUESTED RECORD:

4 A copy of the ASLC's PAIA manual.

5 All correspondence, letters, emails, memoranda, reports, and documentation between the Department and the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

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6 All records and documentation pertaining to any codes, regulations, policies and guidelines, whether internal or public, developed by the ASLC and/or the Department regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

7 All meeting minutes of meetings of the ASLC for the period of 1 January 2018 – 31 December 2023.

8 All correspondence, letters, emails, memoranda, reports, and documentation of the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

9 All cost-benefit analyses conducted in relation to the anticipated compliance costs for members of the air services industry regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This should include detailed assessments of both direct and indirect costs, anticipated benefits, and any compensatory measures proposed or considered.

10 All economic, feasibility, and sustainability studies, reports, and analyses conducted, prepared, or procured with respect to the anticipated impact of the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This request seeks to access documents that evaluate both short-term and long-term effects, encompassing economic growth, sectoral employment, and environmental sustainability.

11 All records and documentation pertaining to the results of early engagement with stakeholders regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA, which includes, but is not limited to, detailed summaries of initial stakeholder feedback, records of early engagement meetings or communications, analyses of stakeholder input, and how this early engagement influenced subsequent stages of policy and record formulation in respect of any BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

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12 All notices, invitations, and public announcements issued by the ASLC in relation to the formulation, implementation or publication of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This should include details of publications in the Government Gazette, government websites and also newspapers. The request also requires delivery of public consultations, stakeholder engagement sessions, and any feedback mechanisms established by the Department in respect of the setting of its SEIAs for the regulations.

13 All notices, publications, and public announcements issued by the ASLC in relation to the formulation, implementation or publication of BEE and/or transformation requirements as part of any licensing requirement under the

ASLA. This should include details of publications in the Government Gazette, government websites, industry channels, electronic messaging and also newspapers.

14 All communications, including but not limited to notices, invitations, and public announcements, disseminated by the ASLC pertaining to consultations, stakeholder engagement, and public feedback opportunities in relation to the draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

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15 All records and communications, including but not limited to notices, invitations, and public announcements, issued by the ASLC concerning the invitation for public participation in the assessment process of draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This should encompass information about the channels used for communication, the target audience for each communication, and the time frame allowed for public responses. Additionally, it should include any accessible platforms or forums provided by the ASLC for public engagement and any materials distributed to facilitate informed participation.

16 All records and reports prepared by the ASLC detailing the public participation process followed with respect to the development of draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any

licensing requirement under the ASLA. This should include a summary of the public input received, an analysis of how this input was considered or incorporated into the final regulations, and any adjustments made to the regulations resulting from public feedback.

17 All feedback or issue tracking reports, communication, memoranda, or documentation highlighting any deficiencies, obstacles, or irregularities encountered at any phase of the public participation process concerning the development of any draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA, as well as all subsequent recommendations, instructions, memoranda, or decisions formulated and adopted by the ASLC in direct response to such identified issues or reports.

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18 All records and information detailing the methodologies used to collect and analyse public responses to all draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA, including any statistical or thematic analysis conducted.

19 All records and documentation pertaining to the process by which the Department identified and mapped stakeholders potentially affected by any draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This includes, but is not limited to, the methods used for identifying stakeholders, the criteria employed for

determining stakeholder relevance, comprehensive lists of identified stakeholders, the rationale behind the inclusion or exclusion of specific groups or individuals, and any analysis or documentation illustrating how the mapping influenced the policy formulation process.

20 All letters, instructions, communication, and directives issued by the ASLC to its officials and staff regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

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21 All letters, instructions, communication, and directives issued by the Department to the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

22 All memoranda, policies, instructions and/or internal guidelines received from the Department mandating or advising the ASLC to prioritise or condition the provision of public services and licenses on compliance with BEE and/or transformation requirements.

23 A detailed list of all government services of the ASLC, including but not limited to all licenses, permits, certificates, grants, subsidies, and concessions, that have been subject to BEE and/or transformation requirements, as well as copies of all documentation setting out the applicable requirements.

SIGNED at PRETORIA on 24 JANUARY 2024.

Rohann Eloff
Kriek Wassenaar & Venter Inc.
Attorneys acting for Sakeliga (the requester)

POWER OF ATTORNEY

I, the undersigned

TOBIAS VIVIAN ALBERTS

ID: 9701165040084

In my capacity as duly appointed

LEGAL OFFICER

of

SAKELIGA NPC

(REG: 2021/04375/08)

do hereby appoint and nominate,

KRIEK WASSENAAR & VENTER INC

and /or their appointed agents / correspondents /nominees



with full power of substitution, to be my lawful attorney with full power and authority for me in my name, and for my account and benefit in the matter of and/pr relating to:

PAIA REQUEST – AIR SERVICES LICENSING COUNCIL OF SOUTH AFRICA

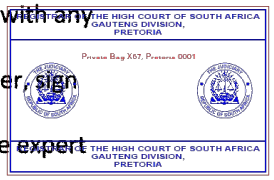
In the event that I act in a representative capacity, any reference to myself will by implication refer to the principal and/or organisation which I represent as indicated above and as the context requires.

The Company's attorneys will in terms of this power of attorney be able to:

1. **Receive and handle moneys:** To demand, sue for and recover, and give discharges for all moneys, securities for all sums of money, debts, stocks, shares and property now or hereafter belonging to me, whether solely or jointly with any other person or persons. Remembering that my attorney will accrue costs/disbursements on my behalf and that certain fees will become payable out of the work done on my behalf, I hereby give *in rem sum* authority to recover all capital, costs, disbursements, fees and all other sums of money due to me on my behalf, and that all amounts received must first be deducted or set off against all fees and disbursements made on my behalf before any payments are made to me. I give specific authority to sign any release or discharge for the amount for the settlement in order to receive and recover the said amount. My attorneys and/or their nominees are also authorised to make use of any capital payments received to make payment of all debts and/or expenses. They are also hereby authorised to withhold as security for costs any portion of any capital received on my behalf as they in their sole discretion see fit, being allowed to debit any preliminary attorney and client fees at any stage;
2. **To institute legal proceedings or to defend:** To defend any civil action brought against me or to institute action in any High Court or Magistrates Court or Arbitration Institution. This will include but not be limited to the institution and/or defending of any action and/or application brought by and/or against me, including but not limited to debt collection, civil claims, delictual matters,

contractual matters, enrichment matters, status matters, family law matters, divorce proceedings, maintenance and custody matters, liquidations, sequestrations and/or any other proceeding for the protection and/or enforcement and/or confirmation of any right that I may hold.

3. **To negotiate, discuss consider and settle:** To negotiate a settlement with any party concerned, to discuss the facts, merits and quantum and to give me advice. To consider all facts and documentation and to make decisions on my behalf. To agree, propose and settle any point in dispute and to agree, propose and settle any figures of settlement and to advise me thereof.
4. **To settle accounts:** To settle, compromise or submit to arbitration all accounts, claims and disputes between me and any other person or persons;
5. **To act with other persons:** To investigate, negotiate, receive and give out any information, documentation or data of any form or sort on my behalf and to act and communicate with any person, attorney, advocate or third party on my behalf;
6. **To draft, receive and sign documentation:** To be able to draft, receive, peruse, consider, sign and give out any documentation that he/she considers relevant or necessary;
7. **To appoint experts:** To approach, consult and appoint any expert witnesses, to acquire expert reports and testimony and to accrue costs and make payments in that regard;
8. **To institute alternative dispute resolution proceedings:** To institute, make use of or request any alternative dispute resolution proceeding including but not limited to arbitration and/or mediation proceedings;
9. **To appoint assessors and agents:** To appoint any assessors, agents and/or tracing agents to assist, do work and give advice on my behalf. I also give authority to pay and settle all accounts in this regard;
10. **To appoint advocates and legal advisors:** To appoint any advocate and/or legal advisor to assist, give opinion and handle matters on my behalf. I also give authority to pay and settle all accounts in this regard;
11. **General power to act:** To do all that is necessary to finalize any matter and to act on my behalf in any manner that he/she considers necessary and in doing so, I confirm this Power is irrevocable. To generally for effecting the purposes aforesaid, to do or cause to be done whatsoever shall be requisite, and fully and effectively, for all intents and purposes, as I might or could do if personally present and acting herein /hereby ratifying, allowing and confirming and promising and agreeing to ratify, allow and confirm all and whatsoever my said Attorneys and Agents shall lawfully do, or cause to be done, by virtue of these presents.



AND

Ratification: I hereby ratify and agree to ratify everything which my Attorney or his/her substitute or substitutes or agent or agents appointed by the Attorney under this power of attorney shall do or purport to do by virtue of this power of attorney.

This done and signed at PRETORIA on this 24 day of JANUARY 2024.

(signed) obo SAKELIGA NPC

12/11/2024-12:52:43 PM

SAKELIGA NPC
REG: 2012/043725/08

DELEGATION OF AUTHORITY

I the undersigned

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

PIETER JACOBUS LE ROUX

hereby in terms of paragraph 5 of the resolution of the Sakeliga NPC board of directors dated 26 November 2019, delegate to **TOBIAS VIVIAN ("TIAN") ALBERTS**, the following powers and authority:

1) the authority to authorise the Company to institute, defend and / or to participate in any legal proceedings, which includes but is not limited to appeals and/or reviews of any matter, and/or the right to have the Company appear, argue, act, support and/or oppose any matter before any State authority or judicial body, as is set out in the Company's objectives – which power and authority is limited only in terms of paragraph 4) below .

2) the authority to represent the Company in all matters referred to in paragraph 1) above, and to sign any document on behalf of and in the name of the Company as its lawful representative.

3) the authority to incur costs on behalf of the Company and to appoint, instruct and direct attorneys, experts and/or consultants to assist the Company with any matters relating to paragraph 1) above.

4) This delegation of authority is limited to matters pertaining to requests, legal processes, and litigation in terms of and/or as a consequence of the Promotion of Access to Information Act 2 of 2000.

Signed at Pretoria on 17 May 2021

PIETER JACOBUS LE ROUX – CEO

I CERTIFY THAT THIS DOCUMENT IS A TRUE REPRODUCTION (COPY) OF THE ORIGINAL DOCUMENT WHICH WAS HANDED TO ME FOR AUTHENTICATION. I FURTHER CERTIFY THAT, FROM MY OBSERVATIONS, NO AMENDMENT OR A CHANGE WAS NOT MADE TO THE ORIGINAL DOCUMENT

SIGNATURE/HANDTEKENING/SIGNATURE

MAGNOMMER/FORCE NUMBER 0516003-87 RANG/RANK WO

NAAM IN DRUKSKRIF/NAME IN PRINT L SCHUMANN C-S

2021-02-06

NOTICE OF PERSONAL PARTICULARS

1. Any changes to the personal particulars in your ID Book must be communicated to all relevant parties.

NOTICE OF CHANGE OF ADDRESS

1. Keep the NOTICE OF CHANGE OF ADDRESS form in this pocket to report a change of address or a change in particular of your present address e.g. name of street and/or street number etc.
2. Hand in at or post to the nearest regional/district office of the DEPARTMENT OF HOME AFFAIRS

I.D. No. 970116 5040 084 [redacted]

SA CITIZEN

SURNAME
ALBERTS

FORENAMES
TOBIAS VIVIAN

COUNTRY OF BIRTH
SOUTH AFRICA

DATE OF BIRTH
1997-01-16



DATE ISSUED
2014-01-23

ISSUED BY AUTHORITY OF THE DIRECTOR-GENERAL HOME AFFAIRS

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PRETORIA

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REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

INFORMATION REGULATOR (SOUTH AFRICA)
Ensuring protection of your personal information and effective access to information

Address: JD House, 27 Stiemens Street
Braamfontein, Johannesburg, 2001
P.O. Box 31533
Braamfontein, Johannesburg, 2017
Tel: 010 023 5200
Email:PAIAComplaints@infoRegulator.org.za

FA8

COMPLAINT FORM

FORM 5
[Regulation 10]

NOTE:

1. This form is designed to assist the Requester or Third Party (hereinafter referred to as "the Complainant") in requesting a review of a Public or Private Body's response or non-response to a request for access to records under the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) ("PAIA"). Please fill out this form and send it to the following email address: PAIAComplaints@infoRegulator.org.za or complete online complaint form available at https://www.justice.gov.za/inforeg/.
2. PAIA gives a member of the public a right to file a complaint with the Information Regulator about any of the nature of complaints detailed in part F of this complaint form.
3. It is the policy of the Information Regulator to defer investigating or to reject a complaint if the Complainant has not first given the public or private body (herein after referred to as "the Body") an opportunity to respond to and attempt to resolve the issue. To help the Body address your concerns prior to approaching the Information Regulator, you are required to complete the prescribed **PAIA Form 2** and submit it to the Body.
4. A copy of this Form will be provided to the Body that is the subject of your complaint. The information you provide on this form, attached to this form or that you supply later, will only be used to attempt to resolve your dispute, unless otherwise stated herein.
5. The Information Regulator will only accept your complaint once you confirm having complied with the prerequisites below.
6. **Please attach copies of the following documents, if you have them**:
   a. Copy of the form to the Body requesting access to records;
   b. The Body's response to your complaint or access request;
   c. Any other correspondence between you and the Body regarding your request;
   d. Copy of the appeal form, if your compliant relate to a public body;
   e. The Body's response to your appeal;
   f. Any other correspondence between you and the Body regarding your appeal;
   g. Documentation authorizing you to act on behalf of another person (if applicable);
   h. Court Order or Court documents relevant to your complaint, if any.
7. If the space provided for in this Form is inadequate, submit information as an Annexure to this Form and sign each page.

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REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

CAPACITY OF PERSON/PARTY LODGING A COMPLAINT (Mark with an "X")	
☐	Complainant Personally
☑	Representative of Complainant
☐	Third Party

PREREQUISITES				
Did you submit request (PAIA form) for access to record of a public/private body?	Yes	☑	No	
Has 30 days lapsed from the date on which you submitted your PAIA form?	Yes	☑	No	
Did you exhaust all the internal appeal procedure against a decision of the Information officer of a public body?	Yes	☑	No	
Have you applied to Court for appropriate relief regarding this matter?	Yes		No	☑

Adv. FDP Tlakula (Chairperson), Adv. LC Stroom Nzama (Full-time Member), Adv. JC Weapond (Full-time Member), Prof. SL Snail ka Mtuze (Part-time Member), Ms. A Tilley (Part-time Member).

FOR INFORMATION REGULATOR'S USE ONLY				
Received by: (Full names)				
Position				
Signature				
Complaint accepted	*Yes*		*No*	
Reference Number				
Date stamp				

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PRETORIA
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GAUTENG DIVISION,
PRETORIA

Postal address	Facsimile	Other electronic communication *(Please specify)*

PART A **PERSONAL INFORMATION OF COMPLAINANT**				
Full Names	Sakeliga NPC			
Identity Number	Reg No: 2012/04375/08			
Postal Address	Building A, Floor5, 416 Kirkness Street, LoftusPark, Pretoria			
Street Address	Building A, Floor5, 416 Kirkness Street, LoftusPark, Pretoria			
E-Mail Address	t.alberts@sakeliga.co.za			
Contact numbers	Tel. (B)	012 880 1951	Facsimile	
	Cellular	012 880 1951		

PART B **REPRESENTATIVE INFORMATION** *(Complete only if you will be represented. A Power of Attorney must be attached if complainant is represented, failing which the complaint will be rejected)*				
Full Names of Representative	Rohann Eloff			
Nature of representation	Attorneys of record for Sakeliga NPC.			
Identity Number / Registration Number	9603075049082			
Postal Address	HB Forum Building, Floor 3, 13 Stamvrug Street, Val de Grace, Pretoria, 0184			
Street Address	HB Forum Building, Floor 3, 13 Stamvrug Street, Val de Grace, Pretoria, 0184			
E-mail Address	rohann@kriekprok.co.za			
Contact Numbers	Tel. (B)	012 803 4719	Facsimile	-86 596 8516
	Cellular	012 803 4719		

PART C **THIRD PARTY INFORMATION** *(Please attach letter of authorisation)*				
Type of Body	Private		Public	
Name of Public / Private Body				
Registration Number (if any)				
Name, Surname and Title of person authorised to lodge a complaint				
Postal Address				
Street Address				
E-mail Address				

Contact Numbers	Tel. (B):		Facsimile		
	Cellular				

PART D
BODY AGAINST WHICH THE COMPLAINT IS LODGED

Type of body	Private		Public	✔
Name of public / private body	Air Service Licensing Council			
Registration number (if any)	Statutory Body			
Name, surname and title of person you dealt with at the public or private body to try to resolve your complaint or request for access to information	Ms Phumudzo Nembudani Mr Motau Macdonald Ms Gugu Magagula			
Postal Address				
Street Address	Forum Building, cnr Bosman and Struben Street			
E-mail Address	Nembuda@dot.gov.za and DomesticCouncil@dot.gov.za			
Contact Numbers	Tel. (B):		Facsimile	
	Cellular			
Reference Number given *(if any)*				

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PART E
COMPLAINT

Tell us about the steps you have taken to try to resolve your complaint (Complaints should first be submitted directly to the public or private body for response and possible resolution)

See attached reasons for complaint.

Date on which request for access to records submitted.	2024-01-24			
Please specify the nature of the right(s) to be exercised or protected, if a compliant is against a private body.	N/A			
Have you attempted to resolve the matter with the organisation?		Yes	✔	No
If yes, when did you receive it? (Please attach the letter to this application.)	See attached reasons for complaint			
Did you appeal against a decision of the information officer of the public body?		Yes		No ✔
If yes, when did you lodge an appeal?	No internal appeal process			
Have you applied to Court for appropriate relief regarding this matter?		Yes		No ✔
If yes, please indicate when was the matter adjudicated by the Court? Please attach Court Order, if there is any.	N/A			

PART F
DETAILED TYPE OF ACCESS TO RECORDS

(Please select one or more of the following to describe your complaint to the Information Regulator)

Unsuccessful appeal (Section 77A(2)*(a)* or section 77A(3)*(a)* of PAIA)	*I have appealed against the decision of the public body and the appeal is unsuccessful.*	
Unsuccessful application for condonation (Sections 77A(2)*(b)* and 75(2) of PAIA)	*I filed my appeal against the decision of the public body late and applied for condonation. The condonation application was dismissed.*	

Refusal of a request for access (Section 77A(2)*(c)*(i) or 77A(2)*(d)*(i) or 77A(3)*(b)* of PAIA)	*I requested access to information held by a body and that request was refused or partially refused.*	☐
The body requires me to pay a fee and I feel it is excessive (Sections 22 or 54 of PAIA)	*Tender or payment of the prescribed fee.*	☐
	The tender or payment of a deposit.	☐
Repayment of the deposit (Section 22(4) of PAIA)	*The information officer refused to repay a deposit paid in respect of a request for access which is refused.*	☐
Disagree with time extension (Sections 26 or 57 of PAIA)	*The body decided to extend the time limit for responding to my request, and I disagree with the requested time limit extension or a time extension taken to respond to my access request.*	☐
Form of access denied (Section 29(3) or 60*(a)* of PAIA)	*I requested access in a particular and reasonable form and such form of access was refused.*	☐
Deemed refusal (Section 27 or 58 of PAIA)	*It is more than 30 days since I made my request and I have not received a decision.*	☑
	Extension period has expired and no response was received.	☐
Inappropriate disclosure of a record (Mandatory grounds for refusal of access to record)	*Records (that are subject to the grounds for refusal of access) have inappropriately/unreasonable been disclosed.*	☐
No adequate reasons for the refusal of access (Section 56(3)*(a)* of PAIA)	*My request for access is refused, and no valid or adequate reasons for the refusal, were given, including the provisions of this Act which were relied upon for the refusal.*	☑
Partial access to record (Section 28(2) or 59(2) of PAIA)	*Access to only a part of the requested records was granted and I believe that more of the records should have been disclosed.*	☐
Fee waiver (Section 22(8) or 54(8) of PAIA)	*I am exempt from paying any fee and my request to waive the fees was refused.*	☐
Records that cannot be found or do not exist (Section 23 or 55 of PAIA)	*The Body indicated that some or all of the requested records do not exist and I believe that more records do exist.*	☐
Failure to disclose records	*The Body decided to grant me access to the requested records, but I have not received them.*	☐
No jurisdiction (exercise or protection of any rights) (Section 50(1)*(a)* of PAIA)	*The Body indicated that the requested records are excluded from PAIA and I disagree.*	☐
Frivolous or vexatious request (Section 45 of PAIA)	*The Body indicated that my request is manifestly frivolous or vexatious and I disagree.*	☐
Other *(Please explain)*	See attached reasons for complaint.	

PART G
EXPECTED OUTCOME

How do you think the Information Regulator can assist you? Describe the result or outcome that you seek.

See attached reasons for complaint.

PART H
AGREEMENTS

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The legal basis for the following agreements is explained in the Privacy Notice on how to file your complaint document. In order for the Information Regulator to process your complaint, you need to check each one of the checkboxes below to show your agreement:

☑ *I agree that the Information Regulator may use the information provided in my complaint to assist it in researching issues relating to the promotion of the right of access to information as well as the protection of the right to privacy in South Africa. I understand that the Information Regulator will never include my personal or other identifying information in any public report, and that my personal information is still protected by the Protection of Personal Information Act, 2013 (Act No. 4 of 2013). I understand that if I do not agree, the Information Regulator will still process my complaint.*

☑ *The information in this Complaint Form is true to the best of my knowledge and belief.*

☑ *I authorize the Information Regulator to collect my personal complaint information (such as the information about me in this complaint form) and use it to process my human rights complaint relating to the right of access to information and / or the protection of the right to privacy.*

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☑ *I authorise anyone (such as an employer, service provider, witness) who has information needed to process my complaint to share it with the Information Regulator. The Information Regulator can obtain this information by talking to witnesses or asking for written records. Depending on the nature of the complaint, these records could include personnel files or employer data, medical or hospital records, and financial or taxpayer information.*

☑ *If any of my contact information changes during the complaint process, it is my responsibility to inform the Information Regulator; otherwise my complaint could experience a delay or even be closed.*

Signed at Pretoria this 17th day of April 20 24

_____

Complainant/Representative/Authorised person of Third party

COMPLAINT TO THE INFORMATION REGULATOR

1 Kindly take note that the complainant, hereby notes a complaint against the refusal by the Air Service Licensing Council ("ASLC") and the information officer to grant the complainant access to the records and/or information as contained in the complainant's PAIA request ("the request") dated 24 January 2024. A copy of the request and proof of lodging are attached hereto as **C1** and **C2** respectively.

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2 The complainant's legal representatives are duly authorised in terms of a power of attorney dated 24 January 2024 to lodge this appeal. The power of attorney is attached to the request.

3 On 18 December 2023, the complainant sent a letter to the ASLC setting out their mandate. In the said letter, the complainant expressed concerns about practices regarding licensing air services. Refer to **C3** and **C4**.

4 In the said letter, the complainant addressed concerns around the ASLC not focussing on ensuring safety and reliability in the provision of air services, but rather focussing on ownership structures, commitment to transformation, and adherence to broad-based black economic empowerment (B-BBEE) principles during license applications.

5 Also contained in the aforementioned letter, the complainant raised concerns regarding licence approvals being based on transformation commitments by the licence applicant.

6 The complainant then continues to demand certain actions from the ASLC which includes that the ASLC refrain from demanding transformation commitments from applicants applying for a license.

7 In response to the abovementioned letter, the ASLC sent a letter to the complainant on 18 December 2023. In the letter, the ASLC acknowledged receipt of the letter and informed the complainant that the ASLC is already in recess for the festive season and that a response to the letter can be expected after 24 January 2024, after the finalisation of the first council meeting in January 2024. See **C5**.

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8 On 8 January 2024, prior to the lodging of the PAIA request, the complainant sent an email to the ASLC informing them of the complainant's inability to locate the ASLC's PAIA manual. A copy of the e-mail is attached hereto as **C6**.

9 On 9 January 2024, the ASLC responded by way of letter and acknowledged receipt of the email from the complainant. In the said letter the ASLC indicated that they are still in recess and would only resume in January 2024. The ASLC indicated that they will submit the email sent by the complainant on 8 January 2024 to the Council for their consideration at their first meeting on 24 January 2024. A copy of the letter is attached as **C7**.

10 In a letter from the Complainant (refer to **C8)** dated 24 January 2024, addressed to the ASLC, the complainant referenced the previous letter sent by the ASLC.

11 In the aforementioned letter the complainant informed the ASLC that there was no lawful reason to wait for the council decision regarding the PAIA manual and that the ASLC was required to have a PAIA manual available.

12 Further to this, the complainant expressed concerns about the unwillingness or the inability of the ASLC to produce a PAIA manual and their management of information under the applicable legislation. The complainant then indicated that if there is no PAIA manual produced immediately the complainant would have to proceed as if there were no PAIA manual.

13 It was together with the aforementioned letter that the PAIA request was sent to the ASLC. No acknowledgement of receipt regarding the PAIA request was received.

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14 In a letter from the ASLC to the complainant dated 24 January 2024, the ASLC informed the complainant that it considered their letter dated 8 January 2024 (attached as **C5)** relating to the complainant's request for the name and contact details of the ASLC's designated Information Officer and a copy of the ASLC's most recent PAIA manual.

15 The ASLC informed the complainant that they are not in possession of the information as requested by the complainant.

16 The ASLC further states, in the letter reference above, that the information sought by the complainant resides with the Department of Transport. See **C9** and **C10**.

17 On 16 February 2024, the complainant sent a letter to the ASLC dated 29 January 2024. See **C11** and **C12**. In the aforementioned letter, the complainant indicates that no response was received regarding the requests of the complainant. Further to this, the complainant, also indicated that the absence of

a response from the ASLC shall be construed as an admission of the allegations outlined in previous letters, reference in paragraph 12.

18 On 23 February 2024, the ASLC sent a letter to the complainant. In this letter, the ASLC indicated that they have responded to the letter by the complainant. The ASLC indicated that they maintain their position that the information sought by the complainant resides with the Department of Transport. See **C13** and **C14**.

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19 The time to provide the information as requested in the PAIA request lapsed on 29 February 2024. No response was received from the ASLC as requested.

20 Section 27 of PAIA provides that:

> *"If an information officer fails to give the decision on a request for access to the requester concerned within the period contemplated in section 25 (1), the information officer is, for the purposes of this Act, regarded as having refused the request."*

21 It is submitted that the complainant has been denied access to information in the PAIA request.

22 Due to the ASLC's refusal provide access to the records and in order to protect the complainant's interest it is necessary to lodge this complaint.

REASONS FOR THE COMPLAINT

23 The complainant submits that the ASLC has improperly and unreasonably refused to provide access to the documents /information requested.

24 The reasons for the improper and unreasonable refusal to grant access will be dealt with below with reference to each item as per annexure A to the request.

LACK OF PAIA MANUAL

25 It is submitted that the ASLC is not in possession of a PAIA manual. This is based on the letter dated 24 January 2024, from the ASLC, where they indicate that:

> *3. Consequently, Council is not in possession of the requested information, however the said information resides with the Department of Transport (DoT).*

26 The ASLC by its own admission is not in possession of a PAIA manual.

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27 This despite the fact that the ASLC is required to publish and have readily available a PAIA Manual as prescribed by section 14 of PAIA.

28 The claimant will however separately submit an assessment with the Information Regulator in this regard.

29 The complainant submits that the request has been improperly rejected and due to a failure to respond the complainant was not provided with reasons for the refusal.

30 The ASLC should be in possession of the requested records and/or information.

31 The information requested does not, to the knowledge of the complainant fall within any exclusions provided for in PAIA.

32 It is submitted that the refusal to gain access is improper and unreasonable. It is further submitted that the ASLC should grant access to the records as per annexure A of the PAIA request.

33 Alternatively, the ASLC should provide proper reasons as to why the request should be refused or further indicate which portions of the record of information requested are subject to the exclusion as stipulated in PAIA.

12/11/2024-12:52:43 PM

CONCLUSION:

34 The ASLC, by its own admission, is not in possession of a PAIA manual, which in itself is in contravention of PAIA.

35 The ASLC has failed to respond in a timeous manner as required by the PAIA act.

36 It is submitted that information requested by the complainant is in possession of the ASLC.

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37 In light of the above the ASLC has improperly and unreasonably refused to grant access to the records and/or information requested in terms of items 2 – 20.

38 It is further submitted that the ASLC should grant access to the records and/or information.

SIGNED AT PRETORIA ON 17 APRIL 2024

ROHANN ELOFF

KRIEK WASSENAAR & VENTER INC

Attorneys acting for Sakeliga NPC (the complainant)

C1

FORM 2

REQUEST FOR ACCESS TO RECORD

[Regulation 7]

NOTE:

1. *Proof of identity must be attached by the requester.*
2. *If requests made on behalf of another person, proof of such authorisation, must be attached to this form.*

TO: The Information Officer
Air Services Licensing Council
Forum Building
cnr Bosman and Struben Streets
Pretoria
(Address)

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E-mail address: NembudaP@dot.gov.za DomesticCouncil@dot.gov.za

Fax number:

*Mark with an **"X"***

[ ] Request is made in my own name [X] Request is made on behalf of another person.

PERSONAL INFORMATION				
Full Names	Rohann Eloff			
Identity Number	9603075049082			
Capacity in which request is made *(when made on behalf of another person)*	Attorney of record for Sakeliga NPC			
Postal Address	HB Forum Building, 13 Stamvrug Street, Val de Grace, Pretoria			
Street Address	HB Forum Building, 13 Stamvrug Street, Val de Grace, Pretoria			
E-mail Address	rohann@kriekprok.co.za			
Contact Numbers	Tel. (B):	012 803 4719	Facsimile:	
	Cellular:	012 803 4719		
Full names of person on whose behalf request is made *(if applicable)*:	Sakeliga NPC			
Identity Number	Reg No: 20120437508			
Postal Address	416 Kirkness St, Arcadia, Pretoria, 0007			

Street Address	416 Kirkness St, Arcadia, Pretoria, 0007			
E-mail Address	t.alberts@sakeliga.co.za			
Contact Numbers	Tel. (B)	012 803 4719	Facsimile	
	Cellular	012 803 4719		

PARTICULARS OF RECORD REQUESTED

Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located. (If the provided space is inadequate, please continue on a separate page and attach it to this form. All additional pages must be signed.)

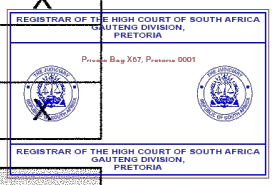
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Description of record or relevant part of the record:	See Annexure A attached hereto
Reference number, if available	QB1184
Any further particulars of record	See Annexure A attached hereto

TYPE OF RECORD
(Mark the applicable box with an "X")

Record is in written or printed form	X
Record comprises virtual images *(this includes photographs, slides, video recordings, computer-generated images, sketches, etc)*	X
Record consists of recorded words or information which can be reproduced in sound	X
Record is held on a computer or in an electronic, or machine-readable form	X

FORM OF ACCESS *(Mark the applicable box with an "X")*	
Printed copy of record *(including copies of any virtual images, transcriptions and information held on computer or in an electronic or machine-readable form)*	X
Written or printed transcription of virtual images *(this includes photographs, slides, video recordings, computer-generated images, sketches, etc)*	
Transcription of soundtrack *(written or printed document)*	
Copy of record on flash drive *(including virtual images and soundtracks)*	X
Copy of record on compact disc drive*(including virtual images and soundtracks)*	
Copy of record saved on cloud storage server	X



MANNER OF ACCESS *(Mark the applicable box with an "X")*	
Personal inspection of record at registered address of public/private body *(including listening to recorded words, information which can be reproduced in sound, or information held on computer or in an electronic or machine-readable form)*	
Postal services to postal address	
Postal services to street address	
Courier service to street address	
Facsimile of information in written or printed format *(including transcriptions)*	
E-mail of information *(including soundtracks if possible)*	X
Cloud share/file transfer	X
Preferred language *(Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available)*	E

PARTICULARS OF RIGHT TO BE EXERCISED OR PROTECTED *If the provided space is inadequate, please continue on a separate page and attach it to this Form. The requester must sign all the additional pages.*	
Indicate which right is to be exercised or protected	Public interest and Constitutional right to information.
	See Annexure A attached hereto.

Explain why the record requested is required for the exercise or protection of the aforementioned right:	Public interest and Constitutional right to information. See Annexure A attached hereto.

FEES	
a) A request fee must be paid before the request will be considered. *b) You will be notified of the amount of the access fee to be paid.* *c) The fee payable for access to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.* *d) If you qualify for exemption of the payment of any fee, please state the reason for exemption*	
Reason	

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You will be notified in writing whether your request has been approved or denied and if approved the costs relating to your request, if any. Please indicate your preferred manner of correspondence:

Postal address	Facsimile	Electronic communication *(Please specify)*
		rohann@kriekprok.co.za

Signed at Pretoria this 24th day of January 20 24

Signature of Requester / person on whose behalf request is made

---

FOR OFFICIAL USE

Reference number:	
Request received by: (State Rank, Name And Surname of Information Officer)	
Date received:	
Access fees:	
Deposit (if any):	

Signature of Information Officer

ANNEXURE A – INFORMATION REQUESTED IN TERMS OF PAIA

INTRODUCTION

1 The requester is a non-profit company and business interest organisation. The requester's main objectives are protecting constitutional rights, constitutional order, the rule of law, and a just and sustainable business environment within South Africa.

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2 The requester believes that the disclosure of the records, as set out below, would reveal evidence of substantial contravention of, or failure to comply with the law, and specifically the legislation mentioned below.

ABBREVIATIONS AND DEFINITIONS

3 Abbreviations and definitions used in this annexure:

3.1 **ASLA** means the Air Services Licensing Act 115 of 1990.

3.2 **ASLC** means the Air Service Licensing Council of South Africa, a juristic person created terms of section 3(1) of the ASLA.

3.3 **BEE** means broad-based black economic empowerment as per the Broad-Based Black Economic Empowerment Act 53 of 2003.

3.4 **Department** means the Department of Transport.

3.5 **PAIA** means the Promotion of Access to Information Act 2 of 2000.

REQUESTED RECORD:

4 A copy of the ASLC's PAIA manual.

5 All correspondence, letters, emails, memoranda, reports, and documentation between the Department and the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

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6 All records and documentation pertaining to any codes, regulations, policies and guidelines, whether internal or public, developed by the ASLC and/or the Department regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

7 All meeting minutes of meetings of the ASLC for the period of 1 January 2018 – 31 December 2023.

8 All correspondence, letters, emails, memoranda, reports, and documentation of the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

9 All cost-benefit analyses conducted in relation to the anticipated compliance costs for members of the air services industry regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This should include detailed assessments of both direct and indirect costs, anticipated benefits, and any compensatory measures proposed or considered.

10 All economic, feasibility, and sustainability studies, reports, and analyses conducted, prepared, or procured with respect to the anticipated impact of the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This request seeks to access documents that evaluate both short-term and long-term effects, encompassing economic growth, sectoral employment, and environmental sustainability.

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11 All records and documentation pertaining to the results of early engagement with stakeholders regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA, which includes, but is not limited to, detailed summaries of initial stakeholder feedback, records of early engagement meetings or communications, analyses of stakeholder input, and how this early engagement influenced subsequent stages of policy and record formulation in respect of any BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

12 All notices, invitations, and public announcements issued by the ASLC in relation to the formulation, implementation or publication of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This should include details of publications in the Government Gazette, government websites and also newspapers. The request also requires delivery of public consultations, stakeholder engagement sessions, and any feedback mechanisms established by the Department in respect of the setting of its SEIAs for the regulations.

13 All notices, publications, and public announcements issued by the ASLC in relation to the formulation, implementation or publication of BEE and/or transformation requirements as part of any licensing requirement under the

ASLA. This should include details of publications in the Government Gazette, government websites, industry channels, electronic messaging and also newspapers.

14 All communications, including but not limited to notices, invitations, and public announcements, disseminated by the ASLC pertaining to consultations, stakeholder engagement, and public feedback opportunities in relation to the draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

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15 All records and communications, including but not limited to notices, invitations, and public announcements, issued by the ASLC concerning the invitation for public participation in the assessment process of draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This should encompass information about the channels used for communication, the target audience for each communication, and the time frame allowed for public responses. Additionally, it should include any accessible platforms or forums provided by the ASLC for public engagement and any materials distributed to facilitate informed participation.

16 All records and reports prepared by the ASLC detailing the public participation process followed with respect to the development of draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any

licensing requirement under the ASLA. This should include a summary of the public input received, an analysis of how this input was considered or incorporated into the final regulations, and any adjustments made to the regulations resulting from public feedback.

17 All feedback or issue tracking reports, communication, memoranda, or documentation highlighting any deficiencies, obstacles, or irregularities encountered at any phase of the public participation process concerning the development of any draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA, as well as all subsequent recommendations, instructions, memoranda, or decisions formulated and adopted by the ASLC in direct response to such identified issues or reports.

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18 All records and information detailing the methodologies used to collect and analyse public responses to all draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA, including any statistical or thematic analysis conducted.

19 All records and documentation pertaining to the process by which the Department identified and mapped stakeholders potentially affected by any draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This includes, but is not limited to, the methods used for identifying stakeholders, the criteria employed for

determining stakeholder relevance, comprehensive lists of identified stakeholders, the rationale behind the inclusion or exclusion of specific groups or individuals, and any analysis or documentation illustrating how the mapping influenced the policy formulation process.

20 All letters, instructions, communication, and directives issued by the ASLC to its officials and staff regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

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GAUTENG DIVISION,
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Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

21 All letters, instructions, communication, and directives issued by the Department to the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

22 All memoranda, policies, instructions and/or internal guidelines received from the Department mandating or advising the ASLC to prioritise or condition the provision of public services and licenses on compliance with BEE and/or transformation requirements.

23 A detailed list of all government services of the ASLC, including but not limited to all licenses, permits, certificates, grants, subsidies, and concessions, that have been subject to BEE and/or transformation requirements, as well as copies of all documentation setting out the applicable requirements.

SIGNED at PRETORIA on 24 JANUARY 2024.

Rohann Eloff
Kriek Wassenaar & Venter Inc.
Attorneys acting for Sakeliga (the requester)

POWER OF ATTORNEY

I, the undersigned

TOBIAS VIVIAN ALBERTS

ID: 9701165040084

In my capacity as duly appointed

LEGAL OFFICER

of

SAKELIGA NPC

(REG: 2021/04375/08)

do hereby appoint and nominate,

KRIEK WASSENAAR & VENTER INC

and /or their appointed agents / correspondents /nominees

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PRETORIA
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REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
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PRETORIA

with full power of substitution, to be my lawful attorney with full power and authority for me in my name, and for my account and benefit in the matter of and/pr relating to:

PAIA REQUEST – AIR SERVICES LICENSING COUNCIL OF SOUTH AFRICA

In the event that I act in a representative capacity, any reference to myself will by implication refer to the principal and/or organisation which I represent as indicated above and as the context requires.

The Company's attorneys will in terms of this power of attorney be able to:

1. **Receive and handle moneys:** To demand, sue for and recover, and give discharges for all moneys, securities for all sums of money, debts, stocks, shares and property now or hereafter belonging to me, whether solely or jointly with any other person or persons. Remembering that my attorney will accrue costs/disbursements on my behalf and that certain fees will become payable out of the work done on my behalf, I hereby give *in rem sum* authority to recover all capital, costs, disbursements, fees and all other sums of money due to me on my behalf, and that all amounts received must first be deducted or set off against all fees and disbursements made on my behalf before any payments are made to me. I give specific authority to sign any release or discharge for the amount for the settlement in order to receive and recover the said amount. My attorneys and/or their nominees are also authorised to make use of any capital payments received to make payment of all debts and/or expenses. They are also hereby authorised to withhold as security for costs any portion of any capital received on my behalf as they in their sole discretion see fit, being allowed to debit any preliminary attorney and client fees at any stage;
2. **To institute legal proceedings or to defend:** To defend any civil action brought against me or to institute action in any High Court or Magistrates Court or Arbitration Institution. This will include but not be limited to the institution and/or defending of any action and/or application brought by and/or against me, including but not limited to debt collection, civil claims, delictual matters,

contractual matters, enrichment matters, status matters, family law matters, divorce proceedings, maintenance and custody matters, liquidations, sequestrations and/or any other proceeding for the protection and/or enforcement and/or confirmation of any right that I may hold.

3. **To negotiate, discuss consider and settle:** To negotiate a settlement with any party concerned, to discuss the facts, merits and quantum and to give me advice. To consider all facts and documentation and to make decisions on my behalf. To agree, propose and settle any point in dispute and to agree, propose and settle any figures of settlement and to advise me thereof.
4. **To settle accounts:** To settle, compromise or submit to arbitration all accounts, claims and disputes between me and any other person or persons;
5. **To act with other persons:** To investigate, negotiate, receive and give out any information, documentation or data of any form or sort on my behalf and to act and communicate with any person, attorney, advocate or third party on my behalf;
6. **To draft, receive and sign documentation:** To be able to draft, receive, peruse, consider, sign and give out any documentation that he/she considers relevant or necessary;
7. **To appoint experts:** To approach, consult and appoint any expert witnesses, to acquire expert reports and testimony and to accrue costs and make payments in that regard;
8. **To institute alternative dispute resolution proceedings:** To institute, make use of or request any alternative dispute resolution proceeding including but not limited to arbitration and/or mediation proceedings;
9. **To appoint assessors and agents:** To appoint any assessors, agents and/or tracing agents to assist, do work and give advice on my behalf. I also give authority to pay and settle all accounts in this regard;
10. **To appoint advocates and legal advisors:** To appoint any advocate and/or legal advisor to assist, give opinion and handle matters on my behalf. I also give authority to pay and settle all accounts in this regard;
11. **General power to act:** To do all that is necessary to finalize any matter and to act on my behalf in any manner that he/she considers necessary and in doing so, I confirm this Power is irrevocable. To generally for effecting the purposes aforesaid, to do or cause to be done whatsoever shall be requisite, and fully and effectively, for all intents and purposes, as I might or could do if personally present and acting herein /hereby ratifying, allowing and confirming and promising and agreeing to ratify, allow and confirm all and whatsoever my said Attorneys and Agents shall lawfully do, or cause to be done, by virtue of these presents.

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PRETORIA
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REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

AND

Ratification: I hereby ratify and agree to ratify everything which my Attorney or his/her substitute or substitutes or agent or agents appointed by the Attorney under this power of attorney shall do or purport to do by virtue of this power of attorney.

This done and signed at PRETORIA on this 24 day of JANUARY 2024.

(signed) obo SAKELIGA NPC

KRIEK WASSENAAR & VENTER ING
Prokureurs • Aktevereenvoerders • Attorneys • Conveyancers
DIRECTORS: J Kriek, PJ Wassenaar Reg: 2012/030418/21
3rd Floor, HB Forum Building, 13 Stamvrug Street, Val de Grace, Pretoria
(t) (012) 803 4719 (f) (086 596 8516 (e) peter@kriekprok.co.za

12/11/2024-12:52:43 PM

SAKELIGA NPC
REG: 2012/043725/08

DELEGATION OF AUTHORITY

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

I the undersigned

PIETER JACOBUS LE ROUX

hereby in terms of paragraph 5 of the resolution of the Sakeliga NPC board of directors dated 26 November 2019, delegate to **TOBIAS VIVIAN ("TIAN") ALBERTS**, the following powers and authority:

1) the authority to authorise the Company to institute, defend and / or to participate in any legal proceedings, which includes but is not limited to appeals and/or reviews of any matter, and/or the right to have the Company appear, argue, act, support and/or oppose any matter before any State authority or judicial body, as is set out in the Company's objectives – which power and authority is limited only in terms of paragraph 4) below .

2) the authority to represent the Company in all matters referred to in paragraph 1) above, and to sign any document on behalf of and in the name of the Company as its lawful representative.

3) the authority to incur costs on behalf of the Company and to appoint, instruct and direct attorneys, experts and/or consultants to assist the Company with any matters relating to paragraph 1) above.

4) This delegation of authority is limited to matters pertaining to requests, legal processes, and litigation in terms of and/or as a consequence of the Promotion of Access to Information Act 2 of 2000.

Signed at Pretoria on 17 May 2021

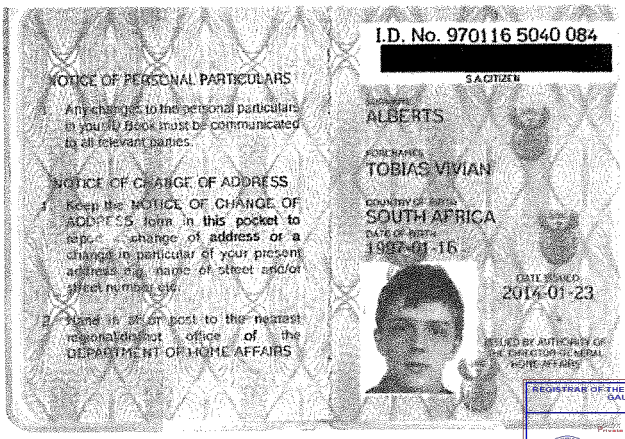
PIETER JACOBUS LE ROUX – CEO

I CERTIFY THAT THIS DOCUMENT IS A TRUE REPRODUCTION (COPY) OF THE ORIGINAL DOCUMENT WHICH WAS HANDED TO ME FOR AUTHENTICATION. I FURTHER CERTIFY THAT, FROM ITS OBSERVATIONS, AN AMENDMENT OR A CHANGE WAS NOT MADE TO THE ORIGINAL DOCUMENT

MAGENOMMER FORCE NUMBER 0344038 RANG RANK WO

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2023 -02- 06



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GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

C2

From: Rohann Eloff
Date: 2024/01/24 09:17:00
To: DomesticCouncil@dot.gov.za; NembudaP@dot.gov.za
CC: Martin Boshoff
Subject: PAIA REQUEST: SAKELIGA NPC / AIR SERVICE LICENSING COUNCIL
Attachments: ASLC sent 2024-01-24.pdf; PAIA request - ASLC 2024-01-24.pdf;
Size: 2479,64 KB

Good day

We refer to the above matter and attach hereto a letter as well as our client's PAIA request for your attention.

Kindly confirm receipt of same.

Yours faithfully

Rohann Eloff

Kriek Wassenaar & Venter Inc

Prokureur / Attorney

• (t) (+27) 12 803 4719 • (f) (+27) 86 596 8797

• (a) 3de Vloer / 3rd Floor, HB Forum Gebou / Building, Stamvrugstraat 13 Stamvrug Street, Val de Grace, Pretoria, 0184

• (p) Postnet Suite #11, Privaatsak / Private Bag X025, Lynnwood Ridge, 0040 • BTW Reg: 4020260685 • Reg: 2012/030418/21

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PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

A

C3

Melissa Jansen van Vuuren

From: Melissa Jansen van Vuuren
Sent: Monday, 18 December 2023 10:17
To: DomesticCouncil@dot.gov.za; NembudaP@dot.gov.za
Cc: Peter Wassenaar
Subject: Air Service Licensing Council - legality of inclusion of B-BBEE and transformation requirements during consideration of Domestic Air Service License Applications
Attachments: Air Service Licensing Council sent 20231218.pdf

Good day

We refer to the above matter and attach hereto a letter for your attention.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Kindly acknowledge receipt of same in writing.

Yours faithfully,

Melissa Jansen van Vuuren

Kriek Wassenaar & Venter Ing

Prokureur / Attorney

• (t) (+27) 12 803 4719 • (f) (+27) 86 596 8797

• (a) 3de Vloer / 3rd Floor, HB Forum Gebou / Buidling, Stamvrugstraat 13 Stamvrug Street, Val de Grace, Pretoria, 0184

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Hierdie e-pos is onderhewig aan voorwaardes. Kliek hier vir meer besonderhede.

This e-mail is subject to certain conditions. Click here for more information.

C4

KRIEK WASSENAAR & VENTER ING
PROKUREURS - ATTORNEYS

Our ref: PJ Wassenaar/ QB1184
Your ref:

18 December 2023

THE AIR SERVICE LICENSING COUNCIL
c/o DEPARTMENT OF TRANSPORT
FORUM BUILDING
159 STRUBEN STREET
PRETORIA

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

By e-mail: DomesticCouncil@dot.gov.za
NembudaP@dot.gov.za

Sir / Madam

In re: Air Service Licensing Council - legality of inclusion of B-BBEE and transformation requirements during consideration of Domestic Air Service License Applications

1. We act on behalf of Sakeliga NPC, a non-profit business interest organisation with supporters across various industries in South Africa. Our client is raising concerns about the Air Service License Council's (Council) practices in licensing air services.

2. Sakeliga's supporters in the air services industry report undue pressure from the Council. Instead of focusing on ensuring safety and reliability in the provision of air services, the Council has seemingly started to emphasise ownership structures, commitment to transformation, and adherence to broad-based black economic empowerment (B-BBEE) principles during license applications.

3. Operators are apparently required to submit a transformation plan and commit to improving their B-BBEE scores, seemingly as part of their licensing applications. Operators have reported council members criticising corporate structures, regardless of current participation in empowerment schemes.

4. Furthermore, it seems that Council members have implied that an applicant's license approval hinges on an applicant's transformation commitments. Operators have apparently been warned that non-compliance with B-BBEE and a refusal to set and meet acceptable transformation commitments will negatively affect future applications.

5. Upon review of the relevant legislation and regulations, we have found no authorisation for the Council's self-arrogated power to demand transformation commitments or information regarding B-BBEE. These threats, whether explicit or implied, fall wholly outside of the scope and objects of the Act.

6. Sakeliga insists that there is no legal justification for the Council to request information beyond the Act's section 16(4) license criteria.

7. We have been instructed to demand that the Council:

   7.1 refrain from demanding transformation commitments and B-BBEE information from applicants applying for a license under the Air Service Licensing Act 115 of 1990;

   7.2 provides an undertaking that it will not pressure applicants applying for a license under the Air Service Licensing Act 115 of 1990, to increase their current B-BBEE scores, or to participate in any transformation schemes created or considered by Council;

   7.3 refrain from, directly or indirectly, implying to applicants that they should comply with any of the matters discussed in paragraphs 7.1 and 7.2 above, or that compliance with such demands will be taken into account by the Council when making a decision on any application before it under the Act;

   7.4 provides an undertaking that it will not penalise an applicant in the awarding of any license because of an applicant's level of participation in B-BBEE or any other transformation objectives considered by the Council or its members.

8. We request a response by **5 January 2023**. Failing thereto, our client will have no choice but to conclude that the Council will be persisting with the aforementioned conduct, which our client deems to be *ultra vires*, unconstitutional and unlawful. Our client's right to approach the court for urgent and/or other relief remains strictly reserved.

Yours faithfully,

KRIEK WASSENAAR & VENTER INC
Péter Wassenaar – Director
(e) peter@kriekprek.co.za

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
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AIR SERVICES LICENSING COUNCIL

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

DomesticCouncil@dot.gov.za

C5

KRIEK WASSENAAR & VENTER ING
13 Stamvrug Road, Val de Grace
Pretoria
0184

ENQ: Ms. Phumudzo Nembudani
TEL: (012) 309 3360
EMAIL: NembudaP@dot.gov.za
DATE: **18 December 2023**

Transmitted via email: peter@kriekprok.co.za

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Dear Mr. Wassenaar

RE: AIR SERVICE LICENSING COUNCIL - LEGALITY OF INCLUSION OF B-BBEE AND TRANSFORMATION REQUIREMENTS DURING CONSIDERATION OF DOMESTIC AIR SERVICE LICENSE APPLICATIONS

1. The Air Services Licensing Council ("**Council**") hereby wishes to acknowledge receipt of your letter on behalf on behalf of Sakeliga NPC, dated 18 December 2023 submitted under the Air Services Licensing Act No. 115 of 1990 (the "**ASL Act**").

2. Kindly note that Council is already in recess for the festive season and they will resume in January 2024.

3. Secretariat will submit your letter to Council for consideration at their first meeting scheduled for 24 January 2024, and a response to be provided thereafter.

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

Yours sincerely,

Council Secretariat
Air Services Licencing Council

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

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

C6

From: Peter Wassenaar
Date: 2024/01/08 13:51:00
To: DomesticCouncil@dot.gov.za; NembudaP@dot.gov.za
CC: martin@kriekprok.co.za
Subject: Request for copy of PAIA manual - Sakeliga NPC * Air Service Licensing Council File: QB1184
Attachments:
Size: 74.85 KB

Good day.

We represent Sakeliga NPC.

We have been unable to locate your institution's manual in terms of the Promotion of Access to Information Act 2 of 2000 (PAIA manual).

We hereby request that the Air Service Licensing Council furnish us with the following information pursuant to section 14 of the Promotion of Access to Information Act:

1) The name and contact details of the designated Information Officer for the Air Service Licensing Council;
2) A copy of the Council's most recent PAIA manual.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

We request that the aforementioned information be provided by close of business on 10 January 2023. In the absence of a response, we shall assume that the Council lacks the required PAIA manual and a designated Information Officer. Consequently, our client's forthcoming request will be dealt with exclusively under the Act, utilising available contact details as the designated address for serving such further PAIA requests that our client might seek to bring to the above e-mail addresses. Please be advised that we will consider the chairperson of the Council to be the head of the institution and by default also its Information Officer.

We anticipate your prompt response.

Yours faithfully / Die uwe

Pèter Wassenaar
Kriek Wassenaar & Venter Ing
Direkteur / Director
• (t) (+27) 12 803 4719 (c) 0829204474
• (a) Third Floor, HB Forum Building, 13 Stamvrug Street, Val de Grace, Pretoria
• (p) Postnet Suite # A7, Privaatsak / Private Bag X592, Silverton, 0127 • BTW Reg: 4020260685 • Reg: 2012/030418/21

KRIEK WASSENAAR & VENTER ING

C7

AIR SERVICES LICENSING COUNCIL

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

DomesticCouncil@dot.gov.za

KRIEK WASSENAAR & VENTER ING
13 Stamvrug Road, Val de Grace
Pretoria
0184

ENQ: Ms. Phumudzo Nembudani
TEL: (012) 309 3360
EMAIL: NembudaP@dot.gov.za
DATE: **09 January 2024**

Transmitted via email: peter@kriekprok.co.za

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Dear Mr. Wassenaar

RE: REQUEST FOR COPY OF PAIA MANUAL - SAKELIGA NPC * AIR SERVICE LICENSING COUNCIL FILE: QB1184

1. We hereby acknowledge receipt of your email on behalf of Sakeliga NPC, dated 08 January 2024.

2. Kindly note that The Air Services Licensing Council ("**Council**") is still in recess and they will resume in January 2024.

3. Secretariat will submit your email to Council for consideration at their first sitting on 24 January 2024, and a response to be provided thereafter.

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

Yours sincerely,

Council Secretariat
Air Services Licencing Council

Mr. Musa Nsibande (Chairperson) - Ms Raesibe Kekana (Vice-Chairperson)
Mr. Rickie Rennie (Council Member) - Ms Leanda-Marsha Mishali (Council Member)

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

C8

KRIEK WASSENAAR & VENTER ING
PROKUREURS - ATTORNEYS

Our ref: PJ Wassenaar/ QB1184
Your ref:

24 January 2024

THE AIR SERVICE LICENSING COUNCIL
c/o DEPARTMENT OF TRANSPORT
FORUM BUILDING
159 STRUBEN STREET
PRETORIA

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

By e-mail: DomesticCouncil@dot.gov.za
NembudaP@dot.gov.za

Sir / Madam

SAKELIGA NPC / AIR SERVICE LICENSING COUNCIL / PAIA MANUAL

1. We refer to your email dated 9 January 2023 concerning our request for a copy of your institution's PAIA manual.

2. Our request does not require any decision from the council. As a juristic person under the Air Service Licensing Act and as a public body in terms of the Promotion of Access to Information Act (PAIA), the council is required to have available to the public a manual, as stipulated in section 13 of PAIA. For us to properly address our client's intended request for information to your institution's Information Officer, we require this manual.

3. There is no lawful reason for us to await your institution's decision on providing it. The mere fact that you are unwilling or unable to produce a manual casts doubt on your institution's management of information and information requests under the applicable legislation. If you cannot immediately produce an approved PAIA manual, we are entitled to proceed as if your institution has not published one, reserving all our client's rights regarding the procedure for submitting and processing our request.

4. Your attention is therefore directed to the attached PAIA request for information, which must be brought to the notice of your information officer or, if no such person has been appointed, the chairperson of the council as head of the institution. You are legally obliged to respond within 30 days from the date of this letter. This does not detract from your obligation to reply

to our earlier letter of demand dated 15 December 2023, which you committed to responding by 15 January 2024.

5. Therefore, we await your responses pertaining both to the earlier demand and the attached PAIA request for information.

Yours faithfully,

KRIEK WASSENAAR & VENTER ING
Péter Wassenaar – Director
(e) peter@kriekorek.co.za

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

C9

AIR SERVICES UCENSING COUNCIL

Private Bag X193
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Cnr Struben & Bosman Streets
Pretoria

DomesticCouncil@dot.gov.za

KRIEK WASSENAAR & VENTER ING
13 Stamvrug Road
Val de Grace
Pretoria
0184

REF: Meeting #01 of 2024
RES NO: 16/19/01/2024
ENQ: Mr. Motau Macdonald
TEL: (012) 309 3274
EMAIL: MotauM@dot.gov.za
DATE: **24 January 2024**

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

Transmitted via email: peter@kriekprok.co.za

Dear Mr. P Wassenaar

RE: REQUEST FOR COPY OF PAIA MANUAL - SAKELIGA NPC * AIR SERVICE LICENSING COUNCIL FILE: QB1184

1. The Air Service Licensing Council (**"Council"**) noted and considered your email dated 08 January 2024.

2. Kindly be advised that Council at its meeting of 19 January 2024, considered your email sent to it on behalf of Sakeliga NPC, requesting the following information pursuant to Section 14 of the Promotion of Access to Information Act:

   2.1. The name and contact details of the designated Information Officer for the Air Service Licensing Council;
   2.2. A copy of the Council's most recent PAIA manual.

3. Consequently, Council is not in possession of the requested information, however the said information resides with the Department of Transport (DoT).

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

Yours sincerely,

COUNCIL SECRETARIAT
AIR SERVICES LICENSING COUNCIL
DATE:

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

Council Secretariat:
Ms. Phumudzo Nembudani (Secretary of Council) - Ms. Patricia Mantsina (Secretary of Council)
Mr. Macdonald Motau (Secretary of Council)

C10

From: Domestic Council
Date: 2024/01/24 17:25:42
To: Rohann Eloff
CC: Martin Boshoff; International Council; Phumudzo Nembudani; Patricia Mantsina; Macdonald Motau; Londiwe Buthelezi; Obakeng Levi
Subject: RE: PAIA REQUEST: SAKELIGA NPC / AIR SERVICE LICENSING COUNCIL/ INTERNATIONAL AIR SERVICE COUNCIL
Attachments: ASLC RESPONCE TO SAKELIGA NPC- REQUEST FOR PAIA MANUAL.pdf; DOT PAIA MANUAL.pdf; IASC RESSPONSE TO SAKELIGA NPC- REQUEST FOR PAIA MANUAL.pdf;
Size: 2029,43 KB

Good Day

We trust that this email finds you well.
Kindly find the attached Letter from the Air Service Licensing Council (ASLC) for your urgent attention.
We trust that you find the attached to be in order.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Kind regards,
ASLC/IASC Secretariat

From: Rohann Eloff <rohann@kriekprok.co.za>
Sent: Wednesday, 24 January 2024 09:18
To: Domestic Council <DomesticCouncil@dot.gov.za>; Phumudzo Nembudani <NembudaP@dot.gov.za>
Cc: Martin Boshoff <martin@kriekprok.co.za>
Subject: PAIA REQUEST: SAKELIGA NPC / AIR SERVICE LICENSING COUNCIL
Importance: High

Good day

We refer to the above matter and attach hereto a letter as well as our client's PAIA request for your attention.

Kindly confirm receipt of same.

Yours faithfully

Rohann Eloff

Kriek Wassenaar & Venter Inc

Prokureur / Attorney

• (t) (+27) 12 803 4719 • (f) (+27) 86 596 8797

• (a) 3de Vloer / 3rd Floor, HB Forum Gebou / Building, Stamvrugstraat 13 Stamvrug Street, Val de Grace, Pretoria, 0184

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C11

From: Peter Wassenaar
Date: 2024/02/16 14:41:00
To: MotauM@dot.gov.za
CC:
Subject: SAKELIGA NPC / AIR SERVICE LICENSING COUNCIL
Attachments: ASLC sent 2024-01-29.pdf;
Size: 215.87 KB

Good day

Please see the attached letter for your urgent attention.

Yours faithfully / Die uwe

Pèter Wassenaar
Kriek Wassenaar & Venter Inc
Direkteur / Director
• (t) (+27) 12 803 4719 (c) 0829204474
• (a) Third Floor, HB Forum Building, 13 Stamvrug Street, Val de Grace, Pretoria
• (p) Postnet Suite # A7, Privaatsak / Private Bag X592, Silverton, 0127 • BTW Reg: 4020260685 • Reg: 2012/030418/21

KRIEK WASSENAAR & VENTER INC

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PRETORIA

A

C12

KRIEK WASSENAAR & VENTER ING
PROKUREURS - ATTORNEYS

Our ref: PJ Wassenaar/ QB1184
Your ref:

29 January 2024

THE AIR SERVICE LICENSING COUNCIL
c/o DEPARTMENT OF TRANSPORT
FORUM BUILDING
159 STRUBEN STREET
PRETORIA

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GAUTENG DIVISION,
PRETORIA
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By e-mail: MotauM@dot.gov.za

Sir / Madam

SAKELIGA NPC / AIR SERVICE LICENSING COUNCIL

1. We refer to your letter in reply to our client's letter of 18 December 2023, dated 25 January 2024, in which you note the referral of our letter to your legal representatives for advice.

2. Our client has not received a response to our letter of 18 December 2023, nor any indication of a prospective date for such response.

3. We hereby demand a reply no later than 29 February 2024.

4. In the absence of a response by the stipulated deadline, we shall construe such failure as an admission of the allegations outlined in our previous communication and shall advise our client on potential legal challenges to the conduct and policies of the ASLC.

Yours faithfully,

KRIEK WASSENAAR & VENTER ING
PETER WASSENAAR – DIRECTOR

www.kwv-inc.com
(t) (+27) 12 756 7566• (f) (+27) 86 596 8799 (a) 3rd Floor, HB Forum Building, 13 Stamvrug Road, Val de Grace, Pretoria 0184
(p) Postnet Suite # 11, Privaatsak / Private Bag X025, Lynwood Ridge, 0040 • BTW Reg: 4020260685

Direkteure/ Directors: Johan Kriek (B Proc, LLM), Péter Johannes Wassenaar (LLB)
Bygestaan deur/assisted by Tertia Johanna Wassenaar (LLB), Kayla Dames (Bcom LLB), Rohann Eloff (Bcom LLB), Melissa Jansen van Vuuren (LLB);
Konsultante / Consultants: Catherina Elizabeth Pienaar (BA, BCur, LLB, LLM, PhD) , Sylvia Adriana Venter (LLB)
• Reg: 2012/030418/21
Docdate 20230302

C13

From: Gugu Magagula
Date: 2024/02/23 17:42:54
To: Peter Wassenaar
CC: Fazlin Harmen; Macdonald Motau; Phumudzo Nembudani; Sonia Ngobeni
Subject: Response Letter
Attachments: RESPONSE LETTER TO SAKELIKA NPC REQUEST FOR PAIA MANUAL 2 (003).pdf;
Size: 523.95 KB

Good day,

I trust that this email finds you well.
Kindly find attached response letter from the ASLC.

Kind regards,

Gugu Magagula
Administrator: ICAO Compliance
ICAO Cmpliance
Legal and Aviation Compliance
Tel: 011 545 1298 | **Email:** magagulag@caa.co.za | www.caa.co.za

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C14

AIR SERVICES UCENSING COUNCIL

Private Bag X73
Halfway House, 1685
Ikhaya Lokundiza
Treur Close,
Waterfall Park,
Bekker Street
Midrand

ASLapplication@caa.co.za

KRIEK WASSENAAR & VENTER ING
13 Stamvrug Road
Val de Grace
Pretoria
0184

REF: Meeting #04 of 2024
RES NO:
ENQ: Ms. Gugu Magagula
TEL: (011) 545 1298
EMAIL:
DATE: 23 February 2024

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Transmitted via email: peter@kriekprok.co.za

Dear Mr. P Wassenaar

RE: PAIA REQUEST: SAKELIGA NPC / AIR SERVICE LICENSING COUNCIL

1. Your letter dated 29 January 2024 (Ref: PJ Wassenaar/ QB1184) and our response on 24 January 2024 bears reference.

2. Kindly note that the Air Service Licensing Council (**"Council"**) have responded to your initial request on 24 January 2024 and still maintains its position. The information relating to PAIA reside with the Department of Transport (DoT).

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

Yours sincerely,

R. Magagula

COUNCIL SECRETARIAT
AIR SERVICES LICENSING COUNCIL
DATE:

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

Council Secretariat:
Ms. Fazlin Harmen (Council Secretary)- Ms. Gugu Magagula (Council Secretary)
Ms. Sonia Ngobeni (Council Secretary)

FORM 2

FA9

REQUEST FOR ACCESS TO RECORD

[Regulation 7]

NOTE:

1. *Proof of identity must be attached by the requester.*
2. *If requests made on behalf of another person, proof of such authorisation, must be attached to this form.*

TO: The Information Officer
The Department of Transport - The Director General
159 Struben Street
Forum Building
Pretoria, 0001
(Address)



E-mail address: CoetzeeC@dot.gov.za KhuzwayL@dot.gov.za

Fax number: paia@dot.gov.za

*Mark with an **"X"***

☐ Request is made in my own name ☒ Request is made on behalf of another person.

PERSONAL INFORMATION				
Full Names	Rohann Eloff			
Identity Number	9603075049082			
Capacity in which request is made *(when made on behalf of another person)*	Attorney of record for Sakeliga NPC. Power of Attorney attached			
Postal Address	HB Forum Building, 13 Stamvrug road, Val de Grace, Pretoria			
Street Address	HB Forum Building, 13 Stamvrug road, Val de Grace, Pretoria			
E-mail Address	rohann@kriekprok.co.za			
Contact Numbers	Tel. (B):	012 803 4719	Facsimile:	
	Cellular:	012 803 4719		
Full names of person on whose behalf request is made *(if applicable)*:	Sakeliga NPC			
Identity Number	Reg: 2012/043725/08			
Postal Address	416 Kirkness Street, Arcadia, Loftus Park,0007			

Street Address	Building A, Floor 5, 416 Kirkness Street, Arcadia, Loftus Park,0007			
E-mail Address	t.alberts@sakeliga.co.za			
Contact Numbers	Tel. (B)	012 880 1951	Facsimile	
	Cellular			

PARTICULARS OF RECORD REQUESTED

Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located. (If the provided space is inadequate, please continue on a separate page and attach it to this form. All additional pages must be signed.)

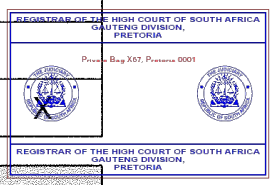
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Description of record or relevant part of the record:	Kindly refer to Annexure A attached hereto.
Reference number, if available	
Any further particulars of record	Kindly refer to Annexure A attached hereto

TYPE OF RECORD
(Mark the applicable box with an "X")

Record is in written or printed form	X
Record comprises virtual images *(this includes photographs, slides, video recordings, computer-generated images, sketches, etc)*	X
Record consists of recorded words or information which can be reproduced in sound	
Record is held on a computer or in an electronic, or machine-readable form	X

FORM OF ACCESS *(Mark the applicable box with an "X")*	
Printed copy of record *(including copies of any virtual images, transcriptions and information held on computer or in an electronic or machine-readable form)*	
Written or printed transcription of virtual images *(this includes photographs, slides, video recordings, computer-generated images, sketches, etc)*	
Transcription of soundtrack *(written or printed document)*	
Copy of record on flash drive *(including virtual images and soundtracks)*	
Copy of record on compact disc drive*(including virtual images and soundtracks)*	
Copy of record saved on cloud storage server	



MANNER OF ACCESS *(Mark the applicable box with an "X")*	
Personal inspection of record at registered address of public/private body *(including listening to recorded words, information which can be reproduced in sound, or information held on computer or in an electronic or machine-readable form)*	
Postal services to postal address	
Postal services to street address	
Courier service to street address	
Facsimile of information in written or printed format *(including transcriptions)*	
E-mail of information *(including soundtracks if possible)*	X
Cloud share/file transfer	X
Preferred language *(Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available)*	E

PARTICULARS OF RIGHT TO BE EXERCISED OR PROTECTED *If the provided space is inadequate, please continue on a separate page and attach it to this Form. The requester must sign all the additional pages.*	
Indicate which right is to be exercised or protected	Constitutional right to access to records held by public office
	bearers. Kindly refer to Annexure A attached hereto.

Explain why the record requested is required for the exercise or protection of the aforementioned right:	

FEES	
a) A request fee must be paid before the request will be considered. *b) You will be notified of the amount of the access fee to be paid.* *c) The fee payable for access to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.* *d) If you qualify for exemption of the payment of any fee, please state the reason for exemption*	
Reason	

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You will be notified in writing whether your request has been approved or denied and if approved the costs relating to your request, if any. Please indicate your preferred manner of correspondence:

Postal address	Facsimile	Electronic communication *(Please specify)*
		rohann@kriekprok.co.za

Signed at Pretoria this 17th day of May 20 24

_____

Signature of Requester / person on whose behalf request is made

---

FOR OFFICIAL USE

Reference number:	
Request received by: (State Rank, Name And Surname of Information Officer)	
Date received:	
Access fees:	
Deposit (if any):	

_____

Signature of Information Officer

ANNEXURE A

REQUEST FOR ACCESS TO INFORMATION IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT

SAKELIGA NPC **Requester**

and

THE DEPARTMEN OF TRANSPORT **Public Body**

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ANNEXURE A – INFORMATION REQUESTED IN TERMS OF PAIA

INTRODUCTION

1 This document serves as particulars to the requester's request for access to Information in terms of the Promotion of Access to Information Act 2 of 2000 ("PAIA").

2 The requester is the **SAKELIGA NPC**, a non-profit company with its principal place of business at Building A, Floor 5, 416 Kirkness Street, Aradia, Loftus Park, 0007 (the 'requester").

3 The requester is duly represented by its attorneys, Kriek Wassenaar & Venter Inc.

4 The public body is the **Department of Transport (DOT)**, principal address at 159 Struben Street, Forum Building, Pretoria, 0001 (the "Public Body").

5 The requester submits this request for access to information pursuant to the latest version of the Public Body's section 14 Promotion of Access to Information Act Manual (hereinafter referred to as "the Manual"), as published Government Gazette No. 40977, on 13 July 2017, bearing the document version "2017". If a newer version is published, the public body is required to provide it to the requester.

6 The requester believes that the disclosure of the records, as set out below, would reveal evidence of substantial contravention of, or failure to comply with the law, and specifically the legislation mentioned below.

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ABBREVIATIONS AND DEFINITIONS

7 Abbreviations and definitions used in this annexure:

7.1 **"ASLA"** means the Air Services Licensing Act 115 of 1990.

7.2 **"ASLC"** means the Air Service Licensing Council of South Africa, a juristic person created terms of section 3(1) of the ASLA.

7.3 **"BEE"** means broad-based black economic empowerment as per the Broad-Based Black Economic Empowerment Act 53 of 2003.

7.4 **"Department"** means the Department of Transport.

7.5 **"PAIA"** means the Promotion of Access to Information Act 2 of 2000.

REQUESTED RECORD:

8 All correspondence, letters, emails, memoranda, reports, and documentation between the Department and the ASLC regarding the implementation of BEE

and/or transformation requirements as part of any licensing requirement under the ASLA.

9 All records and documentation pertaining to any codes, regulations, policies and guidelines, whether internal or public, developed by the ASLC and/or the Department regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

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10 All meeting minutes of meetings of the ASLC for the period of 1 January 2018 – 30 April 2024.

11 All correspondence, letters, emails, memoranda, reports, and documentation of the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

12 All cost-benefit analyses conducted in relation to the anticipated compliance costs for members of the air services industry regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This should include detailed assessments of both direct and indirect costs, anticipated benefits, and any compensatory measures proposed or considered.

13 All economic, feasibility, and sustainability studies, reports, and analyses conducted, prepared, or procured with respect to the anticipated impact of the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This request seeks to access documents that evaluate both short-term and long-term effects, encompassing economic growth, sectoral employment, and environmental sustainability.

14 All records and documentation pertaining to the results of early engagement with stakeholders regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA, which includes, but is not limited to, detailed summaries of initial stakeholder feedback, records of early engagement meetings or communications, analyses of stakeholder input, and how this early engagement influenced subsequent stages of policy and record formulation in respect of any BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

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15 All notices, invitations, and public announcements issued by the ASLC in relation to the formulation, implementation or publication of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This should include details of publications in the Government Gazette, government websites and also newspapers. The request also requires delivery of public consultations, stakeholder engagement sessions, and any feedback mechanisms established by the Department in respect of the setting of its SEIAs for the regulations.

16 All notices, publications, and public announcements issued by the ASLC in relation to the formulation, implementation or publication of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This should include details of publications in the Government Gazette, government websites, industry channels, electronic messaging and also newspapers.

17 All communications, including but not limited to notices, invitations, and public announcements, disseminated by the ASLC pertaining to consultations, stakeholder engagement, and public feedback opportunities in relation to the

draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

18 All records and communications, including but not limited to notices, invitations, and public announcements, issued by the ASLC concerning the invitation for public participation in the assessment process of draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This should encompass information about the channels used for communication, the target audience for each communication, and the time frame allowed for public responses. Additionally, it should include any accessible platforms or forums provided by the ASLC for public engagement and any materials distributed to facilitate informed participation.

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19 All records and reports prepared by the ASLC detailing the public participation process followed with respect to the development of draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This should include a summary of the public input received, an analysis of how this input was considered or incorporated into the final regulations, and any adjustments made to the regulations resulting from public feedback.

20 All feedback or issue tracking reports, communication, memoranda, or documentation highlighting any deficiencies, obstacles, or irregularities

encountered at any phase of the public participation process concerning the development of any draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA, as well as all subsequent recommendations, instructions, memoranda, or decisions formulated and adopted by the ASLC in direct response to such identified issues or reports.

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21 All records and information detailing the methodologies used to collect and analyse public responses to all draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA, including any statistical or thematic analysis conducted.

22 All records and documentation pertaining to the process by which the Department identified and mapped stakeholders potentially affected by any draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This includes, but is not limited to, the methods used for identifying stakeholders, the criteria employed for determining stakeholder relevance, comprehensive lists of identified stakeholders, the rationale behind the inclusion or exclusion of specific groups or individuals, and any analysis or documentation illustrating how the mapping influenced the policy formulation process.

23 All letters, instructions, communication, and directives issued by the ASLC to its officials and staff regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

24 All letters, instructions, communication, and directives issued by the Department to the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

25 All memoranda, policies, instructions and/or internal guidelines received from the Department mandating or advising the ASLC to prioritise or condition the provision of public services and licenses on compliance with BEE and/or transformation requirements.

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26 A detailed list of all government services of the ASLC, including but not limited to all licenses, permits, certificates, grants, subsidies, and concessions, that have been subject to BEE and/or transformation requirements, as well as copies of all documentation setting out the applicable requirements.

SIGNED at PRETORIA on 15 MAY 2024.

Rohann Eloff
Kriek Wassenaar & Venter Inc.
Attorneys acting for Sakeliga (the requester)

POWER OF ATTORNEY

I, the undersigned

TOBIAS VIVIAN ALBERTS

ID: 9701165040084

In my capacity as duly appointed

LEGAL OFFICER

of

SAKELIGA NPC

(REG: 2012/043725/08)

do hereby appoint and nominate,

KRIEK WASSENAAR & VENTER INC

and /or their appointed agents / correspondents /nominees

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with full power of substitution, to be my lawful attorney with full power and authority for me in my name, and for my account and benefit in the matter of and/pr relating to:

PAIA REQUEST – AIR SERVICES LICENSING COUNCIL OF SOUTH AFRICA

In the event that I act in a representative capacity, any reference to myself will by implication refer to the principal and/or organisation which I represent as indicated above and as the context requires.

The Company's attorneys will in terms of this power of attorney be able to:

1. **Receive and handle moneys:** To demand, sue for and recover, and give discharges for all moneys, securities for all sums of money, debts, stocks, shares and property now or hereafter belonging to me, whether solely or jointly with any other person or persons. Remembering that my attorney will accrue costs/disbursements on my behalf and that certain fees will become payable out of the work done on my behalf, I hereby give *in rem sum* authority to recover all capital, costs, disbursements, fees and all other sums of money due to me on my behalf, and that all amounts received must first be deducted or set off against all fees and disbursements made on my behalf before any payments are made to me. I give specific authority to sign any release or discharge for the amount for the settlement in order to receive and recover the said amount. My attorneys and/or their nominees are also authorised to make use of any capital payments received to make payment of all debts and/or expenses. They are also hereby authorised to withhold as security for costs any portion of any capital received on my behalf as they in their sole discretion see fit, being allowed to debit any preliminary attorney and client fees at any stage;
2. **To institute legal proceedings or to defend:** To defend any civil action brought against me or to institute action in any High Court or Magistrates Court or Arbitration Institution. This will include but not be limited to the institution and/or defending of any action and/or application brought by and/or against me, including but not limited to debt collection, civil claims, delictual matters,

contractual matters, enrichment matters, status matters, family law matters, divorce proceedings, maintenance and custody matters, liquidations, sequestrations and/or any other proceeding for the protection and/or enforcement and/or confirmation of any right that I may hold.

3. **To negotiate, discuss consider and settle:** To negotiate a settlement with any party concerned, to discuss the facts, merits and quantum and to give me advice. To consider all facts and documentation and to make decisions on my behalf. To agree, propose and settle any point in dispute and to agree, propose and settle any figures of settlement and to advise me thereof.
4. **To settle accounts:** To settle, compromise or submit to arbitration all accounts, claims and disputes between me and any other person or persons;
5. **To act with other persons:** To investigate, negotiate, receive and give out any information, documentation or data of any form or sort on my behalf and to act and communicate with any person, attorney, advocate or third party on my behalf;
6. **To draft, receive and sign documentation:** To be able to draft, receive, peruse, consider, sign and give out any documentation that he/she considers relevant or necessary;
7. **To appoint experts:** To approach, consult and appoint any expert witnesses, to acquire expert reports and testimony and to accrue costs and make payments in that regard;
8. **To institute alternative dispute resolution proceedings:** To institute, make use of or request any alternative dispute resolution proceeding including but not limited to arbitration and/or mediation proceedings;
9. **To appoint assessors and agents:** To appoint any assessors, agents and/or tracing agents to assist, do work and give advice on my behalf. I also give authority to pay and settle all accounts in this regard;
10. **To appoint advocates and legal advisors:** To appoint any advocate and/or legal advisor to assist, give opinion and handle matters on my behalf. I also give authority to pay and settle all accounts in this regard;
11. **General power to act:** To do all that is necessary to finalize any matter and to act on my behalf in any manner that he/she considers necessary and in doing so, I confirm this Power is irrevocable. To generally for effecting the purposes aforesaid, to do or cause to be done whatsoever shall be requisite, and fully and effectively, for all intents and purposes, as I might or could do if personally present and acting herein /hereby ratifying, allowing and confirming and promising and agreeing to ratify, allow and confirm all and whatsoever my said Attorneys and Agents shall lawfully do, or cause to be done, by virtue of these presents.

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PRETORIA

AND

Ratification: I hereby ratify and agree to ratify everything which my Attorney or his/her substitute or substitutes or agent or agents appointed by the Attorney under this power of attorney shall do or purport to do by virtue of this power of attorney.

This done and signed at PRETORIA on this 24 day of JANUARY 2024.

(signed) obo SAKELIGA NPC

KRIEK WASSENAAR & VENTER ING
Prokureurs • Aktevervaardigers • Attorneys • Conveyancers
DIRECTORS: J Kriek, PJ Wassenaar Reg: 2012/030418/21
3rd Floor, HB Forum Building, 13 Stamvrug Street, Val de Grace, Pretoria
(t) (012) 803 4719 (f) (086 596 8516 (e) peter@kriekprok.co.za

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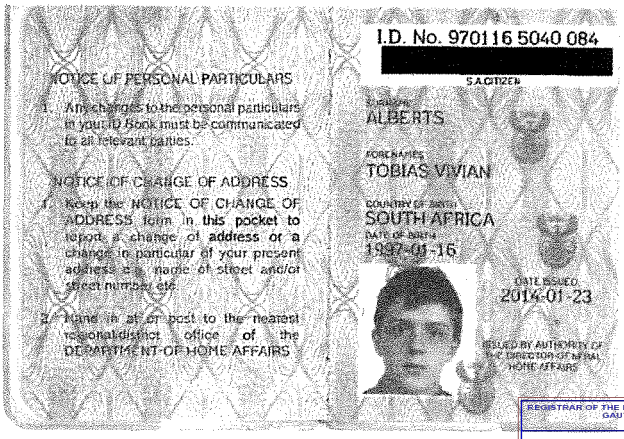
I CERTIFY THAT THIS DOCUMENT IS A TRUE REPRODUCTION (COPY) OF THE ORIGINAL DOCUMENT WHICH WAS HANDED TO ME FOR AUTHENTICATION. I FURTHER CERTIFY THAT, FROM MY OBSERVATIONS, NO AMENDMENT OR A CHANGE WAS NOT MADE TO THE ORIGINAL DOCUMENT

HANDTEKENING/SIGNATURE

MAGSNOMMER/FORCE NUMBER 0544381 RANG/RANK WO

NAAM IN DRUKSKRIF/NAME IN PRINT L COURTNEY C-S

2023 -02- 06



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FA10

INTERNAL APPEAL FORM

FORM 4

[Regulation 9]

Reference Number: .....

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GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
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PARTICULARS OF PUBLIC BODY				
Name of Public Body	Department of Transport			
Name and Surname of Information Officer:	The Director General			
PARTICULARS OF COMPLAINANT WHO LODGES THE INTERNAL APPEAL				
Full Names	Rohann Eloff obo Sakeliga NPC (See Power of Attorney attached)			
Identity Number	960307 5049 082			
Postal Address	Postnet Suite 11, Private Bag X025, Lynnwood Ridge, 0040			
Contact Numbers	Tel. (B)	012 803 4719	Facsimile	
	Cellular			
E-Mail Address	rohann@kriekprok.co.za / martin@kriekprok.co.za			
Is the internal appeal lodged on behalf of another person?	Yes	☒	No	☐
If answer is "yes", capacity in which an internal appeal on behalf of another person is lodged: *(Proof of the capacity in which appeal is lodged, if applicable, must be attached.)*	Sakeliga NPC See Power of Attorney attached.			
PARTICULARS OF PERSON ON WHOSE BEHALF THE INTERNAL APPEAL IS LODGED ***(If lodged by a third party)***				
Full Names	Sakeliga NPC			
Identity Number	Reg No. 2012/043725/08			
Postal Address	416 Kirkness Street, Arcadia, Loftus Park, 0007			
Contact Numbers	Tel. (B)	012 880 1951	Facsimile	
	Cellular			
E-Mail Address	t.alberts@sakeliga.co.za			

DECISION AGAINST WHICH THE INTERNAL APPEAL IS LODGED *(mark the appropriate box with an "X")*	
Refusal of request for access	X
Decision regarding fees prescribed in terms of section 22 of the Act	
Decision regarding the extension of the period within which the request must be dealt with in terms of section 26(1) of the Act	
Decision in terms of section 29(3) of the Act to refuse access in the form requested by the requester	
Decision to grant request for access	

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GROUNDS FOR APPEAL *(If the provided space is inadequate, please continue on a separate page and attach it to this form. all the additional pages must be signed)*	
State the grounds on which the internal appeal is based:	See Annexure A attached hereto.
State any other information that may be relevant in considering the appeal:	See Annexure A attached hereto.

You will be notified in writing of the decision on your internal appeal. Please indicate your preferred manner of notification:

Postal address	Facsimile	Electronic communication *(Please specify)*

Signed at Pretoria this 28 day of June 20 24

Signature of Appellant/Third party

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OFFICIAL RECORD OF INTERNAL APPEAL

Appeal received by: *(state rank, name and surname of Information Officer)*				
Date received:				
Appeal accompanied by the reasons for the information officer's decision and, where applicable, the particulars of any third party to whom or which the record relates, submitted by the information officer:		Yes ☐ No ☐		
OUTCOME OF APPEAL				
Refusal of request for access. Confirmed?	Yes ☐ No ☐		New decision *(if not confirmed)*	
Fees (Sec 22). Confirmed?	Yes ☐ No ☐		New decision *(if not confirmed)*	
Extension (Sec 26(1)). Confirmed?	Yes ☐ No ☐		New decision *(if not confirmed)*	
Access (Sec 29(3)). Confirmed?	Yes ☐ No ☐		New decision *(if not confirmed)*	
Request for access granted. Confirmed?	Yes ☐ No ☐		New decision *(if not confirmed)*	

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Signed at _____ this _____ day of _____ 20 _____

_____

Relevant Authority

ANNEXURE A

INTERNAL APPEAL IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000

SAKELIGA NPC **REQUESTER**

and

THE DEPARTMENT OF TRANSPORT **PUBLIC BODY**



INTERNAL APPEAL

KINDLY TAKE NOTE THAT the requester hereby notes an appeal against the refusal by the Department of Transport ("the Department") and the information officer(s) to grant the requester access to the information contained in the requester's PAIA Request ("the request") dated 17 May 2024. A copy of the PAIA request and proof of lodging are attached hereto as annexures **A1** and **A2**.

The Parties

1 The requester is **SAKELIGA NPC** which has its principal place of business at 5th Floor, 416 Kirkness Street, Loftus Park, Arcadia, Pretoria, 0007, ("the requester").

2 The requester is duly represented herein by its attorneys, Kriek Wassenaar & Venter Inc, as evidenced by the power of attorney attached to the complainant's request (Annexure **A1**).

3 The public body is the **DEPARTMENT OF TRANSPORT** ("the Department") with principal address at 159 Struben Street, Forum Building, Pretoria, 0001.

Request for access to information

4 On 17 May 2024, the requester initiated the request for information by lodging the PAIA request with the Department. Attached as Annexure **A1** and Annexure **A2.**

5 At the lodgement date of this appeal, no responses or decision has been received regarding the PAIA request submitted on 17 May 2024.

Reasons for the appeal

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6 As of the date of lodging this appeal, the Department has failed and/or refused to respond to the PAIA request.

7 Furthermore, section 27 of the Promotion of Access to Information Act 2 of 2000 ("the Act") reads as follows:

> *"If an information officer fails to give the decision on a request for access to the requester concerned within the period contemplated in section 25 (1), the information officer is, for the purposes of this Act, regarded as having refused the request."*

8 The failure and/or refusal by the Department to respond to the request may be regarded as a deemed refusal of such request.

9 Furthermore, the Department failed and/or refused to make use of remedies provided by the Act, such as section 26 which provides for the extension of period to deal with the request.

Conclusion

10 In light of the aforementioned, it is submitted that the request has been improperly and unreasonably refused.

11 It is further submitted that the Department should grant access to the documents/records requested per Annexure A of the PAIA request.

SIGNED AT PRETORIA ON 27 JUNE 2024

Rohann Eloff
Kriek Wassenaar & Venter Inc.
Attorneys' obo The Requester

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A1

FORM 2

REQUEST FOR ACCESS TO RECORD

[Regulation 7]

NOTE:

1. *Proof of identity must be attached by the requester.*
2. *If requests made on behalf of another person, proof of such authorisation, must be attached to this form.*

TO: The Information Officer
The Department of Transport - The Director General
159 Struben Street
Forum Building
Pretoria, 0001
(Address)

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E-mail address: CoetzeeC@dot.gov.za KhuzwayL@dot.gov.za

Fax number: paia@dot.gov.za

*Mark with an **"X"***

☐ Request is made in my own name ☒ Request is made on behalf of another person.

PERSONAL INFORMATION				
Full Names	Rohann Eloff			
Identity Number	9603075049082			
Capacity in which request is made *(when made on behalf of another person)*	Attorney of record for Sakeliga NPC. Power of Attorney attached			
Postal Address	HB Forum Building, 13 Stamvrug road, Val de Grace, Pretoria			
Street Address	HB Forum Building, 13 Stamvrug road, Val de Grace, Pretoria			
E-mail Address	rohann@kriekprok.co.za			
Contact Numbers	Tel. (B):	012 803 4719	Facsimile:	
	Cellular:	012 803 4719		
Full names of person on whose behalf request is made *(if applicable)*:	Sakeliga NPC			
Identity Number	Reg: 2012/043725/08			
Postal Address	416 Kirkness Street, Arcadia, Loftus Park,0007			

Street Address	Building A, Floor 5, 416 Kirkness Street, Arcadia, Loftus Park,0007			
E-mail Address	t.alberts@sakeliga.co.za			
Contact Numbers	Tel. (B)	012 880 1951	Facsimile	
	Cellular			

PARTICULARS OF RECORD REQUESTED

Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located. (If the provided space is inadequate, please continue on a separate page and attach it to this form. All additional pages must be signed.)

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Description of record or relevant part of the record:	Kindly refer to Annexure A attached hereto.
Reference number, if available	
Any further particulars of record	Kindly refer to Annexure A attached hereto

TYPE OF RECORD
(Mark the applicable box with an "X")

Record is in written or printed form	X
Record comprises virtual images *(this includes photographs, slides, video recordings, computer-generated images, sketches, etc)*	X
Record consists of recorded words or information which can be reproduced in sound	
Record is held on a computer or in an electronic, or machine-readable form	X

FORM OF ACCESS *(Mark the applicable box with an "X")*	
Printed copy of record *(including copies of any virtual images, transcriptions and information held on computer or in an electronic or machine-readable form)*	
Written or printed transcription of virtual images *(this includes photographs, slides, video recordings, computer-generated images, sketches, etc)*	
Transcription of soundtrack *(written or printed document)*	
Copy of record on flash drive *(including virtual images and soundtracks)*	
Copy of record on compact disc drive*(including virtual images and soundtracks)*	
Copy of record saved on cloud storage server	

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MANNER OF ACCESS *(Mark the applicable box with an "X")*	
Personal inspection of record at registered address of public/private body *(including listening to recorded words, information which can be reproduced in sound, or information held on computer or in an electronic or machine-readable form)*	
Postal services to postal address	
Postal services to street address	
Courier service to street address	
Facsimile of information in written or printed format *(including transcriptions)*	
E-mail of information *(including soundtracks if possible)*	X
Cloud share/file transfer	X
Preferred language *(Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available)*	E

PARTICULARS OF RIGHT TO BE EXERCISED OR PROTECTED *If the provided space is inadequate, please continue on a separate page and attach it to this Form. The requester must sign all the additional pages.*	
Indicate which right is to be exercised or protected	Constitutional right to access to records held by public office
	bearers. Kindly refer to Annexure A attached hereto.

Explain why the record requested is required for the exercise or protection of the aforementioned right:	

FEES	
a) *A request fee must be paid before the request will be considered.* *b)* *You will be notified of the amount of the access fee to be paid.* *c)* *The fee payable for access to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.* *d)* *If you qualify for exemption of the payment of any fee, please state the reason for exemption*	
Reason	

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You will be notified in writing whether your request has been approved or denied and if approved the costs relating to your request, if any. Please indicate your preferred manner of correspondence:

Postal address	Facsimile	Electronic communication *(Please specify)*
		rohann@kriekprok.co.za

Signed at Pretoria this 17th day of May 20 24

_____

Signature of Requester / person on whose behalf request is made

---

FOR OFFICIAL USE

Reference number:	
Request received by: (State Rank, Name And Surname of Information Officer)	
Date received:	
Access fees:	
Deposit (if any):	

_____

Signature of Information Officer

ANNEXURE A

REQUEST FOR ACCESS TO INFORMATION IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT

SAKELIGA NPC **Requester**

and

THE DEPARTMEN OF TRANSPORT **Public Body**

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ANNEXURE A – INFORMATION REQUESTED IN TERMS OF PAIA

INTRODUCTION

1 This document serves as particulars to the requester's request for access to Information in terms of the Promotion of Access to Information Act 2 of 2000 ("PAIA").

2 The requester is the **SAKELIGA NPC**, a non-profit company with its principal place of business at Building A, Floor 5, 416 Kirkness Street, Aradia, Loftus Park, 0007 (the 'requester").

3 The requester is duly represented by its attorneys, Kriek Wassenaar & Venter Inc.

4 The public body is the **Department of Transport (DOT)**, principal address at 159 Struben Street, Forum Building, Pretoria, 0001 (the "Public Body").

5 The requester submits this request for access to information pursuant to the latest version of the Public Body's section 14 Promotion of Access to Information Act Manual (hereinafter referred to as "the Manual"), as published Government Gazette No. 40977, on 13 July 2017, bearing the document version "2017". If a newer version is published, the public body is required to provide it to the requester.

6 The requester believes that the disclosure of the records, as set out below, would reveal evidence of substantial contravention of, or failure to comply with the law, and specifically the legislation mentioned below.

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ABBREVIATIONS AND DEFINITIONS

7 Abbreviations and definitions used in this annexure:

7.1 **"ASLA"** means the Air Services Licensing Act 115 of 1990.

7.2 **"ASLC"** means the Air Service Licensing Council of South Africa, a juristic person created terms of section 3(1) of the ASLA.

7.3 **"BEE"** means broad-based black economic empowerment as per the Broad-Based Black Economic Empowerment Act 53 of 2003.

7.4 **"Department"** means the Department of Transport.

7.5 **"PAIA"** means the Promotion of Access to Information Act 2 of 2000.

REQUESTED RECORD:

8 All correspondence, letters, emails, memoranda, reports, and documentation between the Department and the ASLC regarding the implementation of BEE

and/or transformation requirements as part of any licensing requirement under the ASLA.

9 All records and documentation pertaining to any codes, regulations, policies and guidelines, whether internal or public, developed by the ASLC and/or the Department regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

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10 All meeting minutes of meetings of the ASLC for the period of 1 January 2018 – 30 April 2024.

11 All correspondence, letters, emails, memoranda, reports, and documentation of the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

12 All cost-benefit analyses conducted in relation to the anticipated compliance costs for members of the air services industry regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This should include detailed assessments of both direct and indirect costs, anticipated benefits, and any compensatory measures proposed or considered.

13 All economic, feasibility, and sustainability studies, reports, and analyses conducted, prepared, or procured with respect to the anticipated impact of the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This request seeks to access documents that evaluate both short-term and long-term effects, encompassing economic growth, sectoral employment, and environmental sustainability.

14 All records and documentation pertaining to the results of early engagement with stakeholders regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA, which includes, but is not limited to, detailed summaries of initial stakeholder feedback, records of early engagement meetings or communications, analyses of stakeholder input, and how this early engagement influenced subsequent stages of policy and record formulation in respect of any BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

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15 All notices, invitations, and public announcements issued by the ASLC in relation to the formulation, implementation or publication of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This should include details of publications in the Government Gazette, government websites and also newspapers. The request also requires delivery of public consultations, stakeholder engagement sessions, and any feedback mechanisms established by the Department in respect of the setting of its SEIAs for the regulations.

16 All notices, publications, and public announcements issued by the ASLC in relation to the formulation, implementation or publication of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This should include details of publications in the Government Gazette, government websites, industry channels, electronic messaging and also newspapers.

17 All communications, including but not limited to notices, invitations, and public announcements, disseminated by the ASLC pertaining to consultations, stakeholder engagement, and public feedback opportunities in relation to the

draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

18 All records and communications, including but not limited to notices, invitations, and public announcements, issued by the ASLC concerning the invitation for public participation in the assessment process of draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This should encompass information about the channels used for communication, the target audience for each communication, and the time frame allowed for public responses. Additionally, it should include any accessible platforms or forums provided by the ASLC for public engagement and any materials distributed to facilitate informed participation.

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19 All records and reports prepared by the ASLC detailing the public participation process followed with respect to the development of draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This should include a summary of the public input received, an analysis of how this input was considered or incorporated into the final regulations, and any adjustments made to the regulations resulting from public feedback.

20 All feedback or issue tracking reports, communication, memoranda, or documentation highlighting any deficiencies, obstacles, or irregularities

encountered at any phase of the public participation process concerning the development of any draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA, as well as all subsequent recommendations, instructions, memoranda, or decisions formulated and adopted by the ASLC in direct response to such identified issues or reports.



21 All records and information detailing the methodologies used to collect and analyse public responses to all draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA, including any statistical or thematic analysis conducted.

22 All records and documentation pertaining to the process by which the Department identified and mapped stakeholders potentially affected by any draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This includes, but is not limited to, the methods used for identifying stakeholders, the criteria employed for determining stakeholder relevance, comprehensive lists of identified stakeholders, the rationale behind the inclusion or exclusion of specific groups or individuals, and any analysis or documentation illustrating how the mapping influenced the policy formulation process.

23 All letters, instructions, communication, and directives issued by the ASLC to its officials and staff regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

24 All letters, instructions, communication, and directives issued by the Department to the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

25 All memoranda, policies, instructions and/or internal guidelines received from the Department mandating or advising the ASLC to prioritise or condition the provision of public services and licenses on compliance with BEE and/or transformation requirements.

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26 A detailed list of all government services of the ASLC, including but not limited to all licenses, permits, certificates, grants, subsidies, and concessions, that have been subject to BEE and/or transformation requirements, as well as copies of all documentation setting out the applicable requirements.

SIGNED at PRETORIA on 15 MAY 2024.

Rohann Eloff
Kriek Wassenaar & Venter Inc.
Attorneys acting for Sakeliga (the requester)

POWER OF ATTORNEY

I, the undersigned

TOBIAS VIVIAN ALBERTS

ID: 9701165040084

In my capacity as duly appointed

LEGAL OFFICER

of

SAKELIGA NPC

(REG: 2012/043725/08)

do hereby appoint and nominate,

KRIEK WASSENAAR & VENTER INC

and /or their appointed agents / correspondents /nominees

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with full power of substitution, to be my lawful attorney with full power and authority for me in my name, and for my account and benefit in the matter of and/pr relating to:

PAIA REQUEST – AIR SERVICES LICENSING COUNCIL OF SOUTH AFRICA

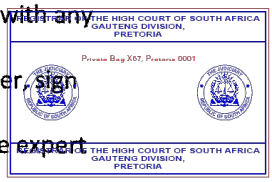
In the event that I act in a representative capacity, any reference to myself will by implication refer to the principal and/or organisation which I represent as indicated above and as the context requires.

The Company's attorneys will in terms of this power of attorney be able to:

1. **Receive and handle moneys:** To demand, sue for and recover, and give discharges for all moneys, securities for all sums of money, debts, stocks, shares and property now or hereafter belonging to me, whether solely or jointly with any other person or persons. Remembering that my attorney will accrue costs/disbursements on my behalf and that certain fees will become payable out of the work done on my behalf, I hereby give *in rem sum* authority to recover all capital, costs, disbursements, fees and all other sums of money due to me on my behalf, and that all amounts received must first be deducted or set off against all fees and disbursements made on my behalf before any payments are made to me. I give specific authority to sign any release or discharge for the amount for the settlement in order to receive and recover the said amount. My attorneys and/or their nominees are also authorised to make use of any capital payments received to make payment of all debts and/or expenses. They are also hereby authorised to withhold as security for costs any portion of any capital received on my behalf as they in their sole discretion see fit, being allowed to debit any preliminary attorney and client fees at any stage;
2. **To institute legal proceedings or to defend:** To defend any civil action brought against me or to institute action in any High Court or Magistrates Court or Arbitration Institution. This will include but not be limited to the institution and/or defending of any action and/or application brought by and/or against me, including but not limited to debt collection, civil claims, delictual matters,

contractual matters, enrichment matters, status matters, family law matters, divorce proceedings, maintenance and custody matters, liquidations, sequestrations and/or any other proceeding for the protection and/or enforcement and/or confirmation of any right that I may hold.

3. **To negotiate, discuss consider and settle:** To negotiate a settlement with any party concerned, to discuss the facts, merits and quantum and to give me advice. To consider all facts and documentation and to make decisions on my behalf. To agree, propose and settle any point in dispute and to agree, propose and settle any figures of settlement and to advise me thereof.
4. **To settle accounts:** To settle, compromise or submit to arbitration all accounts, claims and disputes between me and any other person or persons;
5. **To act with other persons:** To investigate, negotiate, receive and give out any information, documentation or data of any form or sort on my behalf and to act and communicate with any person, attorney, advocate or third party on my behalf;
6. **To draft, receive and sign documentation:** To be able to draft, receive, peruse, consider, sign and give out any documentation that he/she considers relevant or necessary;
7. **To appoint experts:** To approach, consult and appoint any expert witnesses, to acquire expert reports and testimony and to accrue costs and make payments in that regard;
8. **To institute alternative dispute resolution proceedings:** To institute, make use of or request any alternative dispute resolution proceeding including but not limited to arbitration and/or mediation proceedings;
9. **To appoint assessors and agents:** To appoint any assessors, agents and/or tracing agents to assist, do work and give advice on my behalf. I also give authority to pay and settle all accounts in this regard;
10. **To appoint advocates and legal advisors:** To appoint any advocate and/or legal advisor to assist, give opinion and handle matters on my behalf. I also give authority to pay and settle all accounts in this regard;
11. **General power to act:** To do all that is necessary to finalize any matter and to act on my behalf in any manner that he/she considers necessary and in doing so, I confirm this Power is irrevocable. To generally for effecting the purposes aforesaid, to do or cause to be done whatsoever shall be requisite, and fully and effectively, for all intents and purposes, as I might or could do if personally present and acting herein /hereby ratifying, allowing and confirming and promising and agreeing to ratify, allow and confirm all and whatsoever my said Attorneys and Agents shall lawfully do, or cause to be done, by virtue of these presents.

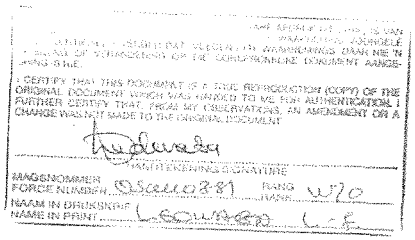


AND

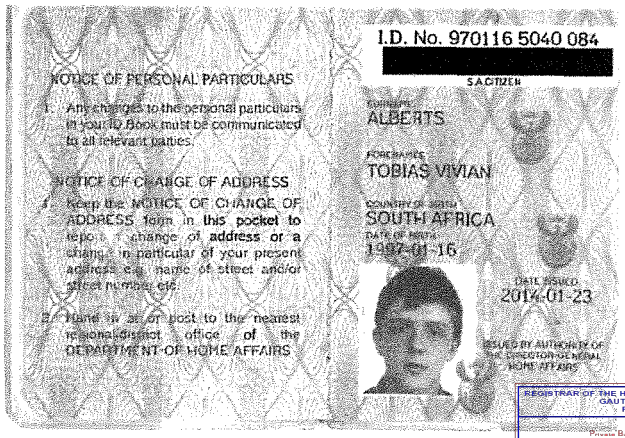
Ratification: I hereby ratify and agree to ratify everything which my Attorney or his/her substitute or substitutes or agent or agents appointed by the Attorney under this power of attorney shall do or purport to do by virtue of this power of attorney.

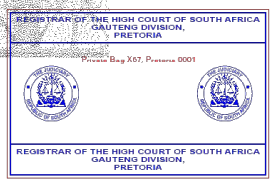
This done and signed at PRETORIA on this 24 day of JANUARY 2024.

(signed) obo SAKELIGA NPC


I CERTIFY THAT THIS DOCUMENT IS A TRUE REPRODUCTION (COPY) OF THE ORIGINAL DOCUMENT WHICH WAS HANDED TO ME FOR AUTHENTICATION. I FURTHER CERTIFY THAT, FROM MY OBSERVATIONS, AN AMENDMENT ON A CHANGE WAS NOT MADE TO THE ORIGINAL DOCUMENT
MAGSNOMMER
FORCE NUMBER
RANG
RANK
NAAM IN DRUKSKRIF
NAME IN PRINT




I.D. No. 970116 5040 084
[redacted]
SA CITIZEN
SURNAME
ALBERTS
FORENAMES
TOBIAS VIVIAN
COUNTRY OF BIRTH
SOUTH AFRICA
DATE OF BIRTH
1997-01-16
DATE ISSUED
2014-01-23
ISSUED BY AUTHORITY OF THE DIRECTOR-GENERAL HOME AFFAIRS
NOTICE OF PERSONAL PARTICULARS
1. Any changes to the personal particulars in your ID Book must be communicated to all relevant parties.
NOTICE OF CHANGE OF ADDRESS
1. Keep the NOTICE OF CHANGE OF ADDRESS form in this pocket to report a change of address or a change in particular of your present address e.g. name of street and/or street number etc.
2. Hand in at or post to the nearest regional/district office of the DEPARTMENT OF HOME AFFAIRS


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REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

A2

From: Martin Boshoff
Date: 5/17/2024 12:52:00 PM
To: CoetzeeC@dot.gov.za; Nozipho Khuzwayo; paia@dot.gov.za
CC: Rohann Eloff
Subject: Sakeliga NPC - Air Service Licensing Council and other - QB1184
Attachments: PAIA Request ASLC - 2024-05-17.pdf;
Size: 3542.49 KB

Good day,

Please find attached our client's information request in terms of the Promotion of Access to Information Act.

Kind regards,

Martin

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Martin Boshoff

Kriek Wassenaar & Venter Ing

Kandidaatprokureur / Candidate Attorney

• (t) (+27) 12 803 4719 • (f) (+27) 86 596 8797

• (a) 3de Vloer / 3rd Floor, HB Forum Gebou / Buidling, Stamvrugstraat 13 Stamvrug Street, Val de Grace, Pretoria, 0184

• (p) Postnet Suite #11, Privaatsak / Private Bag X025, Lynnwood Ridge, 0040 • BTW Reg: 4020260685 • Reg: 2012/030418/21

Hierdie e-pos is onderhewig aan voorwaardes. Kliek hier vir meer besonderhede.

This e-mail is subject to certain conditions. Click here for more information.

KRIEK WASSENAAR & VENTER ING

A A

INFORMATION REGULATOR (SOUTH AFRICA)
Ensuring protection of your personal information and effective access to information

Address: JD House, 27 Stiemens Street
Braamfontein, Johannesburg, 2001
P.O. Box 31533
Braamfontein, Johannesburg, 2017
Tel: 010 023 5200
Email:PAIAComplaints@infoRegulator.org.za

FA11

COMPLAINT FORM

FORM 5
[Regulation 10]

NOTE:

1. This form is designed to assist the Requester or Third Party (hereinafter referred to as "the Complainant") in requesting a review of a Public or Private Body's response or non-response to a request for access to records under the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) ("PAIA"). Please fill out this form and send it to the following email address: PAIAComplaints@infoRegulator.org.za or complete online complaint form available at https://www.justice.gov.za/inforeg/.
2. PAIA gives a member of the public a right to file a complaint with the Information Regulator about any of the nature of complaints detailed in part F of this complaint form.
3. It is the policy of the Information Regulator to defer investigating or to reject a complaint if the Complainant has not first given the public or private body (herein after referred to as "the Body") an opportunity to respond to and attempt to resolve the issue. To help the Body address your concerns prior to approaching the Information Regulator, you are required to complete the prescribed **PAIA Form 2** and submit it to the Body.
4. A copy of this Form will be provided to the Body that is the subject of your complaint. The information you provide on this form, attached to this form or that you supply later, will only be used to attempt to resolve your dispute, unless otherwise stated herein.
5. The Information Regulator will only accept your complaint once you confirm having complied with the prerequisites below.
6. **Please attach copies of the following documents, if you have them**:
   a. Copy of the form to the Body requesting access to records;
   b. The Body's response to your complaint or access request;
   c. Any other correspondence between you and the Body regarding your request;
   d. Copy of the appeal form, if your compliant relate to a public body;
   e. The Body's response to your appeal;
   f. Any other correspondence between you and the Body regarding your appeal;
   g. Documentation authorizing you to act on behalf of another person (if applicable);
   h. Court Order or Court documents relevant to your complaint, if any.
7. If the space provided for in this Form is inadequate, submit information as an Annexure to this Form and sign each page.

THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

CAPACITY OF PERSON/PARTY LODGING A COMPLAINT (Mark with an "X")
☐ Complainant Personally
☑ Representative of Complainant
☐ Third Party

PREREQUISITES				
Did you submit request (PAIA form) for access to record of a public/private body?	Yes	☑	No	
Has 30 days lapsed from the date on which you submitted your PAIA form?	Yes	☑	No	
Did you exhaust all the internal appeal procedure against a decision of the Information officer of a public body?	Yes	☑	No	
Have you applied to Court for appropriate relief regarding this matter?	Yes		No	☑

Adv. FDP Tlakula (Chairperson), Adv. LC Stroom Nzama (Full-time Member), Adv. JC Weapond (Full-time Member), Prof. SL Snail ka Mtuze (Part-time Member), Ms A Tilley (Part-time Member).

FOR INFORMATION REGULATOR'S USE ONLY				
Received by: (Full names)				
Position				
Signature				
Complaint accepted	*Yes*		*No*	
Reference Number				
Date stamp				

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GAUTENG DIVISION,
PRETORIA

Postal address	Facsimile	Other electronic communication *(Please specify)*
		martin@kriekprok.co.za

PART A PERSONAL INFORMATION OF COMPLAINANT				
Full Names	Sakeliga NPC			
Identity Number	Reg No. 2012/043725/08			
Postal Address	Building A, Floor 5, 416 Kirkness Street, Arcadia, Loftus Park, 0007, Pretoria			
Street Address	Building A, Floor 5, 416 Kirkness Street, Arcadia, Loftus Park, 0007, Pretoria			
E-Mail Address	t.alberts@sakeliga.co.za			
Contact numbers	Tel. (B)	012 880 1951	Facsimile	
	Cellular	012 880 1951		

PART B REPRESENTATIVE INFORMATION *(Complete only if you will be represented. A Power of Attorney must be attached if complainant is represented, failing which the complaint will be rejected)*				
Full Names of Representative	Rohann Eloff			
Nature of representation	Attorneys of record for Sakeliga NPC.			
Identity Number / Registration Number	960307 504 9082			
Postal Address	HB Forum Building, Floor 3, 13 Stamvrug Street, Val de Grace, Pretoria, 0184			
Street Address	HB Forum Building, Floor 3, 13 Stamvrug Street, Val de Grace, Pretoria, 0184			
E-mail Address	rohann@kriekprok.co.za / martin@kriekprok.co.za			
Contact Numbers	Tel. (B)	012 803 4719	Facsimile	
	Cellular	012 803 4719		

PART C THIRD PARTY INFORMATION *(Please attach letter of authorisation)*				
Type of Body	Private		Public	
Name of Public / Private Body				
Registration Number (if any)				
Name, Surname and Title of person authorised to lodge a complaint				
Postal Address				
Street Address				
E-mail Address				

Contact Numbers	Tel. (B):		Facsimile		
	Cellular				

PART D
BODY AGAINST WHICH THE COMPLAINT IS LODGED

Type of body	Private		Public	
Name of public / private body	Department of Transport			
Registration number (if any)				
Name, surname and title of person you dealt with at the public or private body to try to resolve your complaint or request for access to information	CoetzeeC@dot.gov.za KhuzwayL@dot.gov.za			
Postal Address	Private Bag X193, Pretoria, 0001			
Street Address	159 Struben Street, Forum Building, Pretoria, 0001			
E-mail Address	CoetzeeC@dot.gov.za / KhuzwayL@dot.gov.za / Paia@dot.gov.za			
Contact Numbers	Tel. (B):	012 309 3172	Facsimile	
	Cellular	012 309 3590		
Reference Number given *(if any)*				

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PART E
COMPLAINT
Tell us about the steps you have taken to try to resolve your complaint (Complaints should first be submitted directly to the public or private body for response and possible resolution)

See attached reasons for complaint.

Date on which request for access to records submitted.	17 May 2024			
Please specify the nature of the right(s) to be exercised or protected, if a compliant is against a private body.	N/A			
Have you attempted to resolve the matter with the organisation?		Yes ✔	No	
If yes, when did you receive it? (Please attach the letter to this application.)	See attached reasons for complaint			
Did you appeal against a decision of the information officer of the public body?		Yes ✔	No	
If yes, when did you lodge an appeal?	28 June 2024			
Have you applied to Court for appropriate relief regarding this matter?		Yes	No ✔	
If yes, please indicate when was the matter adjudicated by the Court? Please attach Court Order, if there is any.	N/A			

PART F
DETAILED TYPE OF ACCESS TO RECORDS
(Please select one or more of the following to describe your complaint to the Information Regulator)

Unsuccessful appeal (Section 77A(2)*(a)* or section 77A(3)*(a)* of PAIA)	*I have appealed against the decision of the public body and the appeal is unsuccessful.*	✔
Unsuccessful application for condonation (Sections 77A(2)*(b)* and 75(2) of PAIA)	*I filed my appeal against the decision of the public body late and applied for condonation. The condonation application was dismissed.*	

Refusal of a request for access (Section 77A(2)*(c)*(i) or 77A(2)*(d)*(i) or 77A(3)*(b)* of PAIA)	*I requested access to information held by a body and that request was refused or partially refused.*	☐
The body requires me to pay a fee and I feel it is excessive (Sections 22 or 54 of PAIA)	*Tender or payment of the prescribed fee.*	☐
	The tender or payment of a deposit.	☐
Repayment of the deposit (Section 22(4) of PAIA)	*The information officer refused to repay a deposit paid in respect of a request for access which is refused.*	☐
Disagree with time extension (Sections 26 or 57 of PAIA)	*The body decided to extend the time limit for responding to my request, and I disagree with the requested time limit extension or a time extension taken to respond to my access request.*	☐
Form of access denied (Section 29(3) or 60*(a)* of PAIA)	*I requested access in a particular and reasonable form and such form of access was refused.*	☐
Deemed refusal (Section 27 or 58 of PAIA)	*It is more than 30 days since I made my request and I have not received a decision.*	✔
	Extension period has expired and no response was received.	☐
Inappropriate disclosure of a record (Mandatory grounds for refusal of access to record)	*Records (that are subject to the grounds for refusal of access) have inappropriately/unreasonable been disclosed.*	☐
No adequate reasons for the refusal of access (Section 56(3)*(a)* of PAIA)	*My request for access is refused, and no valid or adequate reasons for the refusal, were given, including the provisions of this Act which were relied upon for the refusal.*	☐
Partial access to record (Section 28(2) or 59(2) of PAIA)	*Access to only a part of the requested records was granted and I believe that more of the records should have been disclosed.*	☐
Fee waiver (Section 22(8) or 54(8) of PAIA)	*I am exempt from paying any fee and my request to waive the fees was refused.*	☐
Records that cannot be found or do not exist (Section 23 or 55 of PAIA)	*The Body indicated that some or all of the requested records do not exist and I believe that more records do exist.*	☐
Failure to disclose records	*The Body decided to grant me access to the requested records, but I have not received them.*	☐
No jurisdiction (exercise or protection of any rights) (Section 50(1)*(a)* of PAIA)	*The Body indicated that the requested records are excluded from PAIA and I disagree.*	☐
Frivolous or vexatious request (Section 45 of PAIA)	*The Body indicated that my request is manifestly frivolous or vexatious and I disagree.*	☐
Other *(Please explain)*		

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PART G
EXPECTED OUTCOME

How do you think the Information Regulator can assist you? Describe the result or outcome that you seek.

See attached reasons for complaint.

PART H
AGREEMENTS

The legal basis for the following agreements is explained in the Privacy Notice on how to file your complaint document. In order for the Information Regulator to process your complaint, you need to check each one of the checkboxes below to show your agreement:

☑ *I agree that the Information Regulator may use the information provided in my complaint to assist it in researching issues relating to the promotion of the right of access to information as well as the protection of the right to privacy in South Africa. I understand that the Information Regulator will never include my personal or other identifying information in any public report, and that my personal information is still protected by the Protection of Personal Information Act, 2013 (Act No. 4 of 2013). I understand that if I do not agree, the Information Regulator will still process my complaint.*

☑ *The information in this Complaint Form is true to the best of my knowledge and belief.*

☑ *I authorize the Information Regulator to collect my personal complaint information (such as the information about me in this complaint form) and use it to process my human rights complaint relating to the right of access to information and / or the protection of the right to privacy.*

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☑ *I authorise anyone (such as an employer, service provider, witness) who has information needed to process my complaint to share it with the Information Regulator. The Information Regulator can obtain this information by talking to witnesses or asking for written records. Depending on the nature of the complaint, these records could include personnel files or employer data, medical or hospital records, and financial or taxpayer information.*

☑ *If any of my contact information changes during the complaint process, it is my responsibility to inform the Information Regulator; otherwise my complaint could experience a delay or even be closed.*

Signed at Pretoria this 6th day of August 20 2024

Complainant/Representative/Authorised person of Third party

ANNEXURE A

COMPLAINT BEFORE THE INFORMATION REGULATOR

SAKELIGA NPC **COMPLAINANT**

and

THE DEPARTMENT OF TRANSPORT **PUBLIC BODY**

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
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COMPLAINT TO INFORMATION REGULATOR – REQUEST FOR ACCESS TO INFORMATION IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT

KINDLY TAKE NOTE THAT the complainant hereby notes a complaint against the refusal by the Department of Transport ("the Department") and its information officer(s) to grant the complainant access to the records and/or information as contained in the complainant's request for information ("the request") dated 17 May 2024. A copy of the request and proof of lodging is attached hereto as **C1** and **C2**.

The Parties

1 This document serves as particulars of the complainant's complaint to the Information Regulator in terms of the Promotion of Access to Information Act, 2 of 2000 ("the Act").

2 The complainant is SAKELIGA NPC, a non-profit company with its principal place of business at Building A, Floor 5, 416 Kirkness Street, Arcadia, Loftus Park, 0007 ("the Complainant").

3 The complainant is duly represented by its attorneys of record, Kriek Wassenaar and Venter Incorporated, as evidenced by the power of attorney attached to the complainant's request (see Annexure **C1**).

4 The public body is the Department of Transport, with its principal place of address at 159 Struben Street, Forum Building, Pretoria, 0001.

Request for access to information

5 On 17 May 2024, the complainant lodged the request with the Department.

6 The complainant submitted its request for access to information pursuant to the latest version of the Department's section 14 Promotion of Access to Information Manual ("the Manual").

7 Notwithstanding the fact that the identity of the Department's information officer(s) remains unknown to the complainant, it is reasonable for the complainant to accept that the public body has received the request.

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8 A response to the request by the Department was due on 24 June 2024.

9 On 28 June 2024, the complainant lodged an internal appeal with the Department. Kindly refer to the internal appeal and proof of lodgement attached hereto as Annexure **C3** and **C4**.

10 A response to the internal appeal by the Department was due on 29 July 2024.

Grounds for the complaint

11 As of date of lodging this complaint with the Information Regulator, the Department has failed and/or refused to respond to either the request or the internal appeal.

12 It is submitted that the details of the relevant information officer(s) responsible for the processing and consideration of the request were used in lodging the request and the subsequent internal appeal.

13 Despite a reasonable attempt by the complainant to locate the Department's Manual on the Department's website, and notwithstanding the fact that the identity of the public body's information officer(s) remains unknown to the complainant, it is reasonable for the complainant to accept the failure and/or refusal by the Department to respond to

either the request or the internal appeal, as a deemed refusal of such request and internal appeal in terms of section 27 of the Act.

14 Section 27 of the Act reads as follows:

> *"If an information officer fails to give the decision on a request for access to the requester concerned within the period contemplated in section 25 (1), the information officer is, for the purposes of this Act, regarded as having refused the request."*

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PRETORIA

15 As of date of lodging this complaint with the Information Regulator, the public body has failed and/or refused to respond to the request.

16 The Department has also failed and/or refused to make a decision regarding the complainant's internal appeal.

17 Section 77(7) of the Act reads as follows:

> *"(7) If the relevant authority fails to give notice of the decision on an internal appeal to the appellant within the period contemplated in subsection (3), that authority is, for the purposes of this Act, regarded as having dismissed the internal appeal."*

18 The complainant submits that the request and the internal appeal have been improperly and unreasonably refused.

Conclusion

19 The complainant submits that none of the records requested would permit the public body to invoke any ground for refusal as stipulated in Chapter 4, Part 2 of the Act. Consequently, access to all records within the scope of the complainant's request must be granted.

20 The complainant submits that the request and the internal appeal have been improperly and unreasonably refused.

WHEREFORE the complainant submits that the public body should grant access to the records/information as requested in the complainant's request dated 17 May 2024.

SIGNED AT PRETORIA ON 5 AUGUST 2024

ROHANN ELOFF
Kriek Wassenaar & Venter Inc.
Attorneys' obo SAKELIGA NPC

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

C1

FORM 2

REQUEST FOR ACCESS TO RECORD

[Regulation 7]

NOTE:

1. *Proof of identity must be attached by the requester.*
2. *If requests made on behalf of another person, proof of such authorisation, must be attached to this form.*

TO: The Information Officer
The Department of Transport - The Director General
159 Struben Street
Forum Building
Pretoria, 0001
(Address)

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

E-mail address: CoetzeeC@dot.gov.za KhuzwayL@dot.gov.za

Fax number: paia@dot.gov.za

*Mark with an **"X"***

☐ Request is made in my own name ☒ Request is made on behalf of another person.

PERSONAL INFORMATION				
Full Names	Rohann Eloff			
Identity Number	9603075049082			
Capacity in which request is made *(when made on behalf of another person)*	Attorney of record for Sakeliga NPC. Power of Attorney attached			
Postal Address	HB Forum Building, 13 Stamvrug road, Val de Grace, Pretoria			
Street Address	HB Forum Building, 13 Stamvrug road, Val de Grace, Pretoria			
E-mail Address	rohann@kriekprok.co.za			
Contact Numbers	Tel. (B):	012 803 4719	Facsimile:	
	Cellular:	012 803 4719		
Full names of person on whose behalf request is made *(if applicable):*	Sakeliga NPC			
Identity Number	Reg: 2012/043725/08			
Postal Address	416 Kirkness Street, Arcadia, Loftus Park,0007			

A A

Street Address	Building A, Floor 5, 416 Kirkness Street, Arcadia, Loftus Park,0007			
E-mail Address	t.alberts@sakeliga.co.za			
Contact Numbers	Tel. (B)	012 880 1951	Facsimile	
	Cellular			

PARTICULARS OF RECORD REQUESTED

Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located. (If the provided space is inadequate, please continue on a separate page and attach it to this form. All additional pages must be signed.)

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PRETORIA

Description of record or relevant part of the record:	Kindly refer to Annexure A attached hereto.
Reference number, if available	
Any further particulars of record	Kindly refer to Annexure A attached hereto

TYPE OF RECORD
(Mark the applicable box with an "X")

Record is in written or printed form	X
Record comprises virtual images *(this includes photographs, slides, video recordings, computer-generated images, sketches, etc)*	X
Record consists of recorded words or information which can be reproduced in sound	
Record is held on a computer or in an electronic, or machine-readable form	X

FORM OF ACCESS *(Mark the applicable box with an "X")*	
Printed copy of record *(including copies of any virtual images, transcriptions and information held on computer or in an electronic or machine-readable form)*	
Written or printed transcription of virtual images *(this includes photographs, slides, video recordings, computer-generated images, sketches, etc)*	
Transcription of soundtrack *(written or printed document)*	
Copy of record on flash drive *(including virtual images and soundtracks)*	
Copy of record on compact disc drive*(including virtual images and soundtracks)*	
Copy of record saved on cloud storage server	

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MANNER OF ACCESS *(Mark the applicable box with an "X")*	
Personal inspection of record at registered address of public/private body *(including listening to recorded words, information which can be reproduced in sound, or information held on computer or in an electronic or machine-readable form)*	
Postal services to postal address	
Postal services to street address	
Courier service to street address	
Facsimile of information in written or printed format *(including transcriptions)*	
E-mail of information *(including soundtracks if possible)*	X
Cloud share/file transfer	X
Preferred language *(Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available)*	E

PARTICULARS OF RIGHT TO BE EXERCISED OR PROTECTED *If the provided space is inadequate, please continue on a separate page and attach it to this Form. The requester must sign all the additional pages.*	
Indicate which right is to be exercised or protected	Constitutional right to access to records held by public office bearers. Kindly refer to Annexure A attached hereto.

A A

Explain why the record requested is required for the exercise or protection of the aforementioned right:	

FEES	
a) *A request fee must be paid before the request will be considered.* *b)* *You will be notified of the amount of the access fee to be paid.* *c)* *The fee payable for access to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.* *d)* *If you qualify for exemption of the payment of any fee, please state the reason for exemption*	
Reason	

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PRETORIA

You will be notified in writing whether your request has been approved or denied and if approved the costs relating to your request, if any. Please indicate your preferred manner of correspondence:

Postal address	Facsimile	Electronic communication *(Please specify)*
		rohann@kriekprok.co.za

Signed at Pretoria this 17th day of May 20 24

Signature of Requester / person on whose behalf request is made

---

FOR OFFICIAL USE

Reference number:	
Request received by: (State Rank, Name And Surname of Information Officer)	
Date received:	
Access fees:	
Deposit (if any):	

Signature of Information Officer

ANNEXURE A

REQUEST FOR ACCESS TO INFORMATION IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT

SAKELIGA NPC **Requester**

and

THE DEPARTMEN OF TRANSPORT **Public Body**

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
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Private Bag X67, Pretoria 0001
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ANNEXURE A – INFORMATION REQUESTED IN TERMS OF PAIA

INTRODUCTION

1 This document serves as particulars to the requester's request for access to Information in terms of the Promotion of Access to Information Act 2 of 2000 ("PAIA").

2 The requester is the **SAKELIGA NPC**, a non-profit company with its principal place of business at Building A, Floor 5, 416 Kirkness Street, Aradia, Loftus Park, 0007 (the 'requester").

3 The requester is duly represented by its attorneys, Kriek Wassenaar & Venter Inc.

4 The public body is the **Department of Transport (DOT)**, principal address at 159 Struben Street, Forum Building, Pretoria, 0001 (the "Public Body").

5 The requester submits this request for access to information pursuant to the latest version of the Public Body's section 14 Promotion of Access to Information Act Manual (hereinafter referred to as "the Manual"), as published Government Gazette No. 40977, on 13 July 2017, bearing the document version "2017". If a newer version is published, the public body is required to provide it to the requester.

6 The requester believes that the disclosure of the records, as set out below, would reveal evidence of substantial contravention of, or failure to comply with the law and specifically the legislation mentioned below.

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PRETORIA

ABBREVIATIONS AND DEFINITIONS

7 Abbreviations and definitions used in this annexure:

7.1 **"ASLA"** means the Air Services Licensing Act 115 of 1990.

7.2 **"ASLC"** means the Air Service Licensing Council of South Africa, a juristic person created terms of section 3(1) of the ASLA.

7.3 **"BEE"** means broad-based black economic empowerment as per the Broad-Based Black Economic Empowerment Act 53 of 2003.

7.4 **"Department"** means the Department of Transport.

7.5 **"PAIA"** means the Promotion of Access to Information Act 2 of 2000.

REQUESTED RECORD:

8 All correspondence, letters, emails, memoranda, reports, and documentation between the Department and the ASLC regarding the implementation of BEE

and/or transformation requirements as part of any licensing requirement under the ASLA.

9 All records and documentation pertaining to any codes, regulations, policies and guidelines, whether internal or public, developed by the ASLC and/or the Department regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

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10 All meeting minutes of meetings of the ASLC for the period of 1 January 2018 – 30 April 2024.

11 All correspondence, letters, emails, memoranda, reports, and documentation of the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

12 All cost-benefit analyses conducted in relation to the anticipated compliance costs for members of the air services industry regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This should include detailed assessments of both direct and indirect costs, anticipated benefits, and any compensatory measures proposed or considered.

13 All economic, feasibility, and sustainability studies, reports, and analyses conducted, prepared, or procured with respect to the anticipated impact of the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This request seeks to access documents that evaluate both short-term and long-term effects, encompassing economic growth, sectoral employment, and environmental sustainability.

14 All records and documentation pertaining to the results of early engagement with stakeholders regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA, which includes, but is not limited to, detailed summaries of initial stakeholder feedback, records of early engagement meetings or communications, analyses of stakeholder input, and how this early engagement influenced subsequent stages of policy and record formulation in respect of any BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

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15 All notices, invitations, and public announcements issued by the ASLC in relation to the formulation, implementation or publication of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This should include details of publications in the Government Gazette, government websites and also newspapers. The request also requires delivery of public consultations, stakeholder engagement sessions, and any feedback mechanisms established by the Department in respect of the setting of its SEIAs for the regulations.

16 All notices, publications, and public announcements issued by the ASLC in relation to the formulation, implementation or publication of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This should include details of publications in the Government Gazette, government websites, industry channels, electronic messaging and also newspapers.

17 All communications, including but not limited to notices, invitations, and public announcements, disseminated by the ASLC pertaining to consultations, stakeholder engagement, and public feedback opportunities in relation to the

draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

18 All records and communications, including but not limited to notices, invitations, and public announcements, issued by the ASLC concerning the invitation for public participation in the assessment process of draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This should encompass information about the channels used for communication, the target audience for each communication, and the time frame allowed for public responses. Additionally, it should include any accessible platforms or forums provided by the ASLC for public engagement and any materials distributed to facilitate informed participation.

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19 All records and reports prepared by the ASLC detailing the public participation process followed with respect to the development of draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This should include a summary of the public input received, an analysis of how this input was considered or incorporated into the final regulations, and any adjustments made to the regulations resulting from public feedback.

20 All feedback or issue tracking reports, communication, memoranda, or documentation highlighting any deficiencies, obstacles, or irregularities

encountered at any phase of the public participation process concerning the development of any draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA, as well as all subsequent recommendations, instructions, memoranda, or decisions formulated and adopted by the ASLC in direct response to such identified issues or reports.

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PRETORIA

21 All records and information detailing the methodologies used to collect and analyse public responses to all draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA, including any statistical or thematic analysis conducted.

22 All records and documentation pertaining to the process by which the Department identified and mapped stakeholders potentially affected by any draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This includes, but is not limited to, the methods used for identifying stakeholders, the criteria employed for determining stakeholder relevance, comprehensive lists of identified stakeholders, the rationale behind the inclusion or exclusion of specific groups or individuals, and any analysis or documentation illustrating how the mapping influenced the policy formulation process.

23 All letters, instructions, communication, and directives issued by the ASLC to its officials and staff regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

24 All letters, instructions, communication, and directives issued by the Department to the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

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25 All memoranda, policies, instructions and/or internal guidelines received from the Department mandating or advising the ASLC to prioritise or condition the provision of public services and licenses on compliance with BEE and/or transformation requirements.

26 A detailed list of all government services of the ASLC, including but not limited to all licenses, permits, certificates, grants, subsidies, and concessions, that have been subject to BEE and/or transformation requirements, as well as copies of all documentation setting out the applicable requirements.

SIGNED at PRETORIA on 15 MAY 2024.

Rohann Eloff
Kriek Wassenaar & Venter Inc.
Attorneys acting for Sakeliga (the requester)

POWER OF ATTORNEY

I, the undersigned

TOBIAS VIVIAN ALBERTS

ID: 9701165040084

In my capacity as duly appointed

LEGAL OFFICER

of

SAKELIGA NPC

(REG: 2012/043725/08)

do hereby appoint and nominate,

KRIEK WASSENAAR & VENTER INC

and /or their appointed agents / correspondents /nominees



with full power of substitution, to be my lawful attorney with full power and authority for me in my name, and for my account and benefit in the matter of and/pr relating to:

PAIA REQUEST – AIR SERVICES LICENSING COUNCIL OF SOUTH AFRICA

In the event that I act in a representative capacity, any reference to myself will by implication refer to the principal and/or organisation which I represent as indicated above and as the context requires.

The Company's attorneys will in terms of this power of attorney be able to:

1. **Receive and handle moneys:** To demand, sue for and recover, and give discharges for all moneys, securities for all sums of money, debts, stocks, shares and property now or hereafter belonging to me, whether solely or jointly with any other person or persons. Remembering that my attorney will accrue costs/disbursements on my behalf and that certain fees will become payable out of the work done on my behalf, I hereby give *in rem sum* authority to recover all capital, costs, disbursements, fees and all other sums of money due to me on my behalf, and that all amounts received must first be deducted or set off against all fees and disbursements made on my behalf before any payments are made to me. I give specific authority to sign any release or discharge for the amount for the settlement in order to receive and recover the said amount. My attorneys and/or their nominees are also authorised to make use of any capital payments received to make payment of all debts and/or expenses. They are also hereby authorised to withhold as security for costs any portion of any capital received on my behalf as they in their sole discretion see fit, being allowed to debit any preliminary attorney and client fees at any stage;
2. **To institute legal proceedings or to defend:** To defend any civil action brought against me or to institute action in any High Court or Magistrates Court or Arbitration Institution. This will include but not be limited to the institution and/or defending of any action and/or application brought by and/or against me, including but not limited to debt collection, civil claims, delictual matters,

contractual matters, enrichment matters, status matters, family law matters, divorce proceedings, maintenance and custody matters, liquidations, sequestrations and/or any other proceeding for the protection and/or enforcement and/or confirmation of any right that I may hold.

3. **To negotiate, discuss consider and settle:** To negotiate a settlement with any party concerned, to discuss the facts, merits and quantum and to give me advice. To consider all facts and documentation and to make decisions on my behalf. To agree, propose and settle any point in dispute and to agree, propose and settle any figures of settlement and to advise me thereof.
4. **To settle accounts:** To settle, compromise or submit to arbitration all accounts, claims and disputes between me and any other person or persons;
5. **To act with other persons:** To investigate, negotiate, receive and give out any information, documentation or data of any form or sort on my behalf and to act and communicate with any person, attorney, advocate or third party on my behalf;
6. **To draft, receive and sign documentation:** To be able to draft, receive, peruse, consider, sign and give out any documentation that he/she considers relevant or necessary;
7. **To appoint experts:** To approach, consult and appoint any expert witnesses, to acquire expert reports and testimony and to accrue costs and make payments in that regard;
8. **To institute alternative dispute resolution proceedings:** To institute, make use of or request any alternative dispute resolution proceeding including but not limited to arbitration and/or mediation proceedings;
9. **To appoint assessors and agents:** To appoint any assessors, agents and/or tracing agents to assist, do work and give advice on my behalf. I also give authority to pay and settle all accounts in this regard;
10. **To appoint advocates and legal advisors:** To appoint any advocate and/or legal advisor to assist, give opinion and handle matters on my behalf. I also give authority to pay and settle all accounts in this regard;
11. **General power to act:** To do all that is necessary to finalize any matter and to act on my behalf in any manner that he/she considers necessary and in doing so, I confirm this Power is irrevocable. To generally for effecting the purposes aforesaid, to do or cause to be done whatsoever shall be requisite, and fully and effectively, for all intents and purposes, as I might or could do if personally present and acting herein /hereby ratifying, allowing and confirming and promising and agreeing to ratify, allow and confirm all and whatsoever my said Attorneys and Agents shall lawfully do, or cause to be done, by virtue of these presents.

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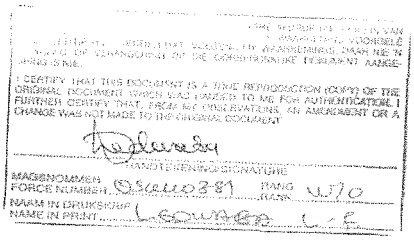
AND

Ratification: I hereby ratify and agree to ratify everything which my Attorney or his/her substitute or substitutes or agent or agents appointed by the Attorney under this power of attorney shall do or purport to do by virtue of this power of attorney.

This done and signed at PRETORIA on this 24 day of JANUARY 2024.

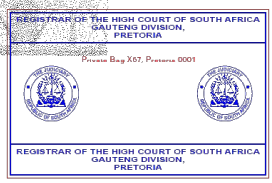
(signed) obo SAKELIGA NPC

KRIEK WASSENAAR & VENTER ING
DIRECTORS: J Kriek, PJ Wassenaar Reg: 2012/030418/21
3rd Floor, HB Forum Building, 13 Stamvrug Street, Val de Grace, Pretoria
(t) (012) 803 4719 (f) (086 596 8516 (e) peter@kriekprok.co.za






I.D. No. 970116 5040 084
[redacted]
SA CITIZEN
NOTICE OF PERSONAL PARTICULARS
1. Any changes to the personal particulars in your ID Book must be communicated to all relevant parties.
NOTICE OF CHANGE OF ADDRESS
1. Keep the NOTICE OF CHANGE OF ADDRESS form in this pocket to report a change of address or a change in particular of your present address e.g. name of street and/or street number etc.
2. Hand in at or post to the nearest regional/district office of the DEPARTMENT OF HOME AFFAIRS
SURNAME
ALBERTS
FORENAMES
TOBIAS VIVIAN
COUNTRY OF BIRTH
SOUTH AFRICA
DATE OF BIRTH
1997-01-16
DATE ISSUED
2014-01-23
ISSUED BY AUTHORITY OF THE DIRECTOR-GENERAL HOME AFFAIRS


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REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

C2

From: Martin Boshoff
Date: 5/17/2024 12:52:00 PM
To: CoetzeeC@dot.gov.za; Nozipho Khuzwayo; paia@dot.gov.za
CC: Rohann Eloff
Subject: Sakeliga NPC - Air Service Licensing Council and other - QB1184
Attachments: PAIA Request ASLC - 2024-05-17.pdf;
Size: 3542.49 KB

Good day,

Please find attached our client's information request in terms of the Promotion of Access to Information Act.

Kind regards,

Martin

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GAUTENG DIVISION,
PRETORIA

Martin Boshoff

Kriek Wassenaar & Venter Ing

Kandidaatprokureur / Candidate Attorney

• (t) (+27) 12 803 4719 • (f) (+27) 86 596 8797

• (a) 3de Vloer / 3rd Floor, HB Forum Gebou / Buidling, Stamvrugstraat 13 Stamvrug Street, Val de Grace, Pretoria, 0184

• (p) Postnet Suite #11, Privaatsak / Private Bag X025, Lynnwood Ridge, 0040 • BTW Reg: 4020260685 • Reg: 2012/030418/21

Hierdie e-pos is onderhewig aan voorwaardes. Kliek hier vir meer besonderhede.

This e-mail is subject to certain conditions. Click here for more information.

KRIEK WASSENAAR & VENTER (INC)

A A

C3

INTERNAL APPEAL FORM

FORM 4

[Regulation 9]

Reference Number: .....

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PARTICULARS OF PUBLIC BODY				
Name of Public Body	Department of Transport			
Name and Surname of Information Officer:	The Director General			
PARTICULARS OF COMPLAINANT WHO LODGES THE INTERNAL APPEAL				
Full Names	Rohann Eloff obo Sakeliga NPC (See Power of Attorney attached)			
Identity Number	960307 5049 082			
Postal Address	Postnet Suite 11, Private Bag X025, Lynnwood Ridge, 0040			
Contact Numbers	Tel. (B)	012 803 4719	Facsimile	
	Cellular			
E-Mail Address	rohann@kriekprok.co.za / martin@kriekprok.co.za			
Is the internal appeal lodged on behalf of another person?	Yes	☒	No	☐
If answer is "yes", capacity in which an internal appeal on behalf of another person is lodged: *(Proof of the capacity in which appeal is lodged, if applicable, must be attached.)*	Sakeliga NPC See Power of Attorney attached.			
PARTICULARS OF PERSON ON WHOSE BEHALF THE INTERNAL APPEAL IS LODGED ***(If lodged by a third party)***				
Full Names	Sakeliga NPC			
Identity Number	Reg No. 2012/043725/08			
Postal Address	416 Kirkness Street, Arcadia, Loftus Park, 0007			
Contact Numbers	Tel. (B)	012 880 1951	Facsimile	
	Cellular			
E-Mail Address	t.alberts@sakeliga.co.za			

DECISION AGAINST WHICH THE INTERNAL APPEAL IS LODGED *(mark the appropriate box with an "X")*	
Refusal of request for access	X
Decision regarding fees prescribed in terms of section 22 of the Act	
Decision regarding the extension of the period within which the request must be dealt with in terms of section 26(1) of the Act	
Decision in terms of section 29(3) of the Act to refuse access in the form requested by the requester	
Decision to grant request for access	

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GROUNDS FOR APPEAL

(If the provided space is inadequate, please continue on a separate page and attach it to this form. all the additional pages must be signed)

State the grounds on which the internal appeal is based:	See Annexure A attached hereto.
State any other information that may be relevant in considering the appeal:	See Annexure A attached hereto.

You will be notified in writing of the decision on your internal appeal. Please indicate your preferred manner of notification:

Postal address	Facsimile	Electronic communication *(Please specify)*

Signed at Pretoria this 28 day of June 20 24

Signature of Appellant/Third party

A A

FOR OFFICIAL USE

OFFICIAL RECORD OF INTERNAL APPEAL

Appeal received by: *(state rank, name and surname of Information Officer)*				
Date received:				
Appeal accompanied by the reasons for the information officer's decision and, where applicable, the particulars of any third party to whom or which the record relates, submitted by the information officer:		Yes ☐ No ☐		
OUTCOME OF APPEAL				
Refusal of request for access. Confirmed?	Yes ☐ No ☐		New decision *(if not confirmed)*	
Fees (Sec 22). Confirmed?	Yes ☐ No ☐		New decision *(if not confirmed)*	
Extension (Sec 26(1)). Confirmed?	Yes ☐ No ☐		New decision *(if not confirmed)*	
Access (Sec 29(3)). Confirmed?	Yes ☐ No ☐		New decision *(if not confirmed)*	
Request for access granted. Confirmed?	Yes ☐ No ☐		New decision *(if not confirmed)*	

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Signed at _____ this _____ day of _____ 20 _____

_____

Relevant Authority

A A

ANNEXURE A

INTERNAL APPEAL IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000

SAKELIGA NPC **REQUESTER**

and

THE DEPARTMENT OF TRANSPORT **PUBLIC BODY**

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INTERNAL APPEAL

KINDLY TAKE NOTE THAT the requester hereby notes an appeal against the refusal by the Department of Transport ("the Department") and the information officer(s) to grant the requester access to the information contained in the requester's PAIA Request ("the request") dated 17 May 2024. A copy of the PAIA request and proof of lodging are attached hereto as annexures **A1** and **A2**.

The Parties

1 The requester is **SAKELIGA NPC** which has its principal place of business at 5th Floor, 416 Kirkness Street, Loftus Park, Arcadia, Pretoria, 0007, ("the requester").

2 The requester is duly represented herein by its attorneys, Kriek Wassenaar & Venter Inc, as evidenced by the power of attorney attached to the complainant's request (Annexure **A1**).

3 The public body is the **DEPARTMENT OF TRANSPORT** ("the Department") with principal address at 159 Struben Street, Forum Building, Pretoria, 0001.

Request for access to information

4 On 17 May 2024, the requester initiated the request for information by lodging the PAIA request with the Department. Attached as Annexure **A1** and Annexure **A2.**

5 At the lodgement date of this appeal, no responses or decision has been received regarding the PAIA request submitted on 17 May 2024.

Reasons for the appeal

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6 As of the date of lodging this appeal, the Department has failed and/or refused to respond to the PAIA request.

7 Furthermore, section 27 of the Promotion of Access to Information Act 2 of 2000 ("the Act") reads as follows:

> *"If an information officer fails to give the decision on a request for access to the requester concerned within the period contemplated in section 25 (1), the information officer is, for the purposes of this Act, regarded as having refused the request."*

8 The failure and/or refusal by the Department to respond to the request may be regarded as a deemed refusal of such request.

9 Furthermore, the Department failed and/or refused to make use of remedies provided by the Act, such as section 26 which provides for the extension of period to deal with the request.

Conclusion

10 In light of the aforementioned, it is submitted that the request has been improperly and unreasonably refused.

11 It is further submitted that the Department should grant access to the documents/records requested per Annexure A of the PAIA request.

SIGNED AT PRETORIA ON 27 JUNE 2024

Rohann Eloff
Kriek Wassenaar & Venter Inc.
Attorneys' obo The Requester

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A1

FORM 2

REQUEST FOR ACCESS TO RECORD

[Regulation 7]

NOTE:

1. *Proof of identity must be attached by the requester.*
2. *If requests made on behalf of another person, proof of such authorisation, must be attached to this form.*

TO: The Information Officer
The Department of Transport - The Director General
159 Struben Street
Forum Building
Pretoria, 0001
(Address)

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

E-mail address: CoetzeeC@dot.gov.za KhuzwayL@dot.gov.za

Fax number: paia@dot.gov.za

*Mark with an **"X"***

☐ Request is made in my own name ☒ Request is made on behalf of another person.

PERSONAL INFORMATION				
Full Names	Rohann Eloff			
Identity Number	9603075049082			
Capacity in which request is made *(when made on behalf of another person)*	Attorney of record for Sakeliga NPC. Power of Attorney attached			
Postal Address	HB Forum Building, 13 Stamvrug road, Val de Grace, Pretoria			
Street Address	HB Forum Building, 13 Stamvrug road, Val de Grace, Pretoria			
E-mail Address	rohann@kriekprok.co.za			
Contact Numbers	Tel. (B):	012 803 4719	Facsimile:	
	Cellular:	012 803 4719		
Full names of person on whose behalf request is made *(if applicable)*:	Sakeliga NPC			
Identity Number	Reg: 2012/043725/08			
Postal Address	416 Kirkness Street, Arcadia, Loftus Park,0007			

Street Address	Building A, Floor 5, 416 Kirkness Street, Arcadia, Loftus Park,0007			
E-mail Address	t.alberts@sakeliga.co.za			
Contact Numbers	Tel. (B)	012 880 1951	Facsimile	
	Cellular			

PARTICULARS OF RECORD REQUESTED

Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located. (If the provided space is inadequate, please continue on a separate page and attach it to this form. All additional pages must be signed.)

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Description of record or relevant part of the record:	Kindly refer to Annexure A attached hereto.
Reference number, if available	
Any further particulars of record	Kindly refer to Annexure A attached hereto

TYPE OF RECORD
(Mark the applicable box with an "X")

Record is in written or printed form	X
Record comprises virtual images *(this includes photographs, slides, video recordings, computer-generated images, sketches, etc)*	X
Record consists of recorded words or information which can be reproduced in sound	
Record is held on a computer or in an electronic, or machine-readable form	X

FORM OF ACCESS *(Mark the applicable box with an "X")*	
Printed copy of record *(including copies of any virtual images, transcriptions and information held on computer or in an electronic or machine-readable form)*	
Written or printed transcription of virtual images *(this includes photographs, slides, video recordings, computer-generated images, sketches, etc)*	
Transcription of soundtrack *(written or printed document)*	
Copy of record on flash drive *(including virtual images and soundtracks)*	
Copy of record on compact disc drive*(including virtual images and soundtracks)*	
Copy of record saved on cloud storage server	X

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PRETORIA

MANNER OF ACCESS *(Mark the applicable box with an "X")*	
Personal inspection of record at registered address of public/private body *(including listening to recorded words, information which can be reproduced in sound, or information held on computer or in an electronic or machine-readable form)*	
Postal services to postal address	
Postal services to street address	
Courier service to street address	
Facsimile of information in written or printed format *(including transcriptions)*	
E-mail of information *(including soundtracks if possible)*	X
Cloud share/file transfer	X
Preferred language *(Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available)*	E

PARTICULARS OF RIGHT TO BE EXERCISED OR PROTECTED *If the provided space is inadequate, please continue on a separate page and attach it to this Form. The requester must sign all the additional pages.*	
Indicate which right is to be exercised or protected	Constitutional right to access to records held by public office bearers. Kindly refer to Annexure A attached hereto.

Explain why the record requested is required for the exercise or protection of the aforementioned right:	

FEES	
a) A request fee must be paid before the request will be considered. *b) You will be notified of the amount of the access fee to be paid.* *c) The fee payable for access to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.* *d) If you qualify for exemption of the payment of any fee, please state the reason for exemption*	
Reason	

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PRETORIA

You will be notified in writing whether your request has been approved or denied and if approved the costs relating to your request, if any. Please indicate your preferred manner of correspondence:

Postal address	Facsimile	Electronic communication *(Please specify)*
		rohann@kriekprok.co.za

Signed at Pretoria this 17th day of May 20 24

Signature of Requester / person on whose behalf request is made

---

FOR OFFICIAL USE

Reference number:	
Request received by: (State Rank, Name And Surname of Information Officer)	
Date received:	
Access fees:	
Deposit (if any):	

Signature of Information Officer

ANNEXURE A

REQUEST FOR ACCESS TO INFORMATION IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT

SAKELIGA NPC **Requester**

and

THE DEPARTMEN OF TRANSPORT **Public Body**

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
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PRETORIA

ANNEXURE A – INFORMATION REQUESTED IN TERMS OF PAIA

INTRODUCTION

1 This document serves as particulars to the requester's request for access to Information in terms of the Promotion of Access to Information Act 2 of 2000 ("PAIA").

2 The requester is the **SAKELIGA NPC**, a non-profit company with its principal place of business at Building A, Floor 5, 416 Kirkness Street, Aradia, Loftus Park, 0007 (the 'requester").

3 The requester is duly represented by its attorneys, Kriek Wassenaar & Venter Inc.

4 The public body is the **Department of Transport (DOT)**, principal address at 159 Struben Street, Forum Building, Pretoria, 0001 (the "Public Body").

5 The requester submits this request for access to information pursuant to the latest version of the Public Body's section 14 Promotion of Access to Information Act Manual (hereinafter referred to as "the Manual"), as published Government Gazette No. 40977, on 13 July 2017, bearing the document version "2017". If a newer version is published, the public body is required to provide it to the requester.

6 The requester believes that the disclosure of the records, as set out below, would reveal evidence of substantial contravention of, or failure to comply with the law, and specifically the legislation mentioned below.

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ABBREVIATIONS AND DEFINITIONS

7 Abbreviations and definitions used in this annexure:

7.1 **"ASLA"** means the Air Services Licensing Act 115 of 1990.

7.2 **"ASLC"** means the Air Service Licensing Council of South Africa, a juristic person created terms of section 3(1) of the ASLA.

7.3 **"BEE"** means broad-based black economic empowerment as per the Broad-Based Black Economic Empowerment Act 53 of 2003.

7.4 **"Department"** means the Department of Transport.

7.5 **"PAIA"** means the Promotion of Access to Information Act 2 of 2000.

REQUESTED RECORD:

8 All correspondence, letters, emails, memoranda, reports, and documentation between the Department and the ASLC regarding the implementation of BEE

and/or transformation requirements as part of any licensing requirement under the ASLA.

9 All records and documentation pertaining to any codes, regulations, policies and guidelines, whether internal or public, developed by the ASLC and/or the Department regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

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10 All meeting minutes of meetings of the ASLC for the period of 1 January 2018 – 30 April 2024.

11 All correspondence, letters, emails, memoranda, reports, and documentation of the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

12 All cost-benefit analyses conducted in relation to the anticipated compliance costs for members of the air services industry regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This should include detailed assessments of both direct and indirect costs, anticipated benefits, and any compensatory measures proposed or considered.

13 All economic, feasibility, and sustainability studies, reports, and analyses conducted, prepared, or procured with respect to the anticipated impact of the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This request seeks to access documents that evaluate both short-term and long-term effects, encompassing economic growth, sectoral employment, and environmental sustainability.

14 All records and documentation pertaining to the results of early engagement with stakeholders regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA, which includes, but is not limited to, detailed summaries of initial stakeholder feedback, records of early engagement meetings or communications, analyses of stakeholder input, and how this early engagement influenced subsequent stages of policy and record formulation in respect of any BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

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15 All notices, invitations, and public announcements issued by the ASLC in relation to the formulation, implementation or publication of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This should include details of publications in the Government Gazette, government websites and also newspapers. The request also requires delivery of public consultations, stakeholder engagement sessions, and any feedback mechanisms established by the Department in respect of the setting of its SEIAs for the regulations.

16 All notices, publications, and public announcements issued by the ASLC in relation to the formulation, implementation or publication of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This should include details of publications in the Government Gazette, government websites, industry channels, electronic messaging and also newspapers.

17 All communications, including but not limited to notices, invitations, and public announcements, disseminated by the ASLC pertaining to consultations, stakeholder engagement, and public feedback opportunities in relation to the

draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

18 All records and communications, including but not limited to notices, invitations, and public announcements, issued by the ASLC concerning the invitation for public participation in the assessment process of draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This should encompass information about the channels used for communication, the target audience for each communication, and the time frame allowed for public responses. Additionally, it should include any accessible platforms or forums provided by the ASLC for public engagement and any materials distributed to facilitate informed participation.

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19 All records and reports prepared by the ASLC detailing the public participation process followed with respect to the development of draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This should include a summary of the public input received, an analysis of how this input was considered or incorporated into the final regulations, and any adjustments made to the regulations resulting from public feedback.

20 All feedback or issue tracking reports, communication, memoranda, or documentation highlighting any deficiencies, obstacles, or irregularities

encountered at any phase of the public participation process concerning the development of any draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA, as well as all subsequent recommendations, instructions, memoranda, or decisions formulated and adopted by the ASLC in direct response to such identified issues or reports.

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21 All records and information detailing the methodologies used to collect and analyse public responses to all draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA, including any statistical or thematic analysis conducted.

22 All records and documentation pertaining to the process by which the Department identified and mapped stakeholders potentially affected by any draft and final versions of all codes, policies and guidelines prepared by the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA. This includes, but is not limited to, the methods used for identifying stakeholders, the criteria employed for determining stakeholder relevance, comprehensive lists of identified stakeholders, the rationale behind the inclusion or exclusion of specific groups or individuals, and any analysis or documentation illustrating how the mapping influenced the policy formulation process.

23 All letters, instructions, communication, and directives issued by the ASLC to its officials and staff regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

24 All letters, instructions, communication, and directives issued by the Department to the ASLC regarding the implementation of BEE and/or transformation requirements as part of any licensing requirement under the ASLA.

25 All memoranda, policies, instructions and/or internal guidelines received from the Department mandating or advising the ASLC to prioritise or condition the provision of public services and licenses on compliance with BEE and/or transformation requirements.

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26 A detailed list of all government services of the ASLC, including but not limited to all licenses, permits, certificates, grants, subsidies, and concessions, that have been subject to BEE and/or transformation requirements, as well as copies of all documentation setting out the applicable requirements.

SIGNED at PRETORIA on 15 MAY 2024.

Rohann Eloff
Kriek Wassenaar & Venter Inc.
Attorneys acting for Sakeliga (the requester)

POWER OF ATTORNEY

I, the undersigned

TOBIAS VIVIAN ALBERTS

ID: 9701165040084

In my capacity as duly appointed

LEGAL OFFICER

of

SAKELIGA NPC

(REG: 2012/043725/08)

do hereby appoint and nominate,

KRIEK WASSENAAR & VENTER INC

and /or their appointed agents / correspondents /nominees



with full power of substitution, to be my lawful attorney with full power and authority for me in my name, and for my account and benefit in the matter of and/pr relating to:

PAIA REQUEST – AIR SERVICES LICENSING COUNCIL OF SOUTH AFRICA

In the event that I act in a representative capacity, any reference to myself will by implication refer to the principal and/or organisation which I represent as indicated above and as the context requires.

The Company's attorneys will in terms of this power of attorney be able to:

1. **Receive and handle moneys:** To demand, sue for and recover, and give discharges for all moneys, securities for all sums of money, debts, stocks, shares and property now or hereafter belonging to me, whether solely or jointly with any other person or persons. Remembering that my attorney will accrue costs/disbursements on my behalf and that certain fees will become payable out of the work done on my behalf, I hereby give *in rem sum* authority to recover all capital, costs, disbursements, fees and all other sums of money due to me on my behalf, and that all amounts received must first be deducted or set off against all fees and disbursements made on my behalf before any payments are made to me. I give specific authority to sign any release or discharge for the amount for the settlement in order to receive and recover the said amount. My attorneys and/or their nominees are also authorised to make use of any capital payments received to make payment of all debts and/or expenses. They are also hereby authorised to withhold as security for costs any portion of any capital received on my behalf as they in their sole discretion see fit, being allowed to debit any preliminary attorney and client fees at any stage;
2. **To institute legal proceedings or to defend:** To defend any civil action brought against me or to institute action in any High Court or Magistrates Court or Arbitration Institution. This will include but not be limited to the institution and/or defending of any action and/or application brought by and/or against me, including but not limited to debt collection, civil claims, delictual matters,

contractual matters, enrichment matters, status matters, family law matters, divorce proceedings, maintenance and custody matters, liquidations, sequestrations and/or any other proceeding for the protection and/or enforcement and/or confirmation of any right that I may hold.

3. **To negotiate, discuss consider and settle:** To negotiate a settlement with any party concerned, to discuss the facts, merits and quantum and to give me advice. To consider all facts and documentation and to make decisions on my behalf. To agree, propose and settle any point in dispute and to agree, propose and settle any figures of settlement and to advise me thereof.
4. **To settle accounts:** To settle, compromise or submit to arbitration all accounts, claims and disputes between me and any other person or persons;
5. **To act with other persons:** To investigate, negotiate, receive and give out any information, documentation or data of any form or sort on my behalf and to act and communicate with any person, attorney, advocate or third party on my behalf;
6. **To draft, receive and sign documentation:** To be able to draft, receive, peruse, consider, sign and give out any documentation that he/she considers relevant or necessary;
7. **To appoint experts:** To approach, consult and appoint any expert witnesses, to acquire expert reports and testimony and to accrue costs and make payments in that regard;
8. **To institute alternative dispute resolution proceedings:** To institute, make use of or request any alternative dispute resolution proceeding including but not limited to arbitration and/or mediation proceedings;
9. **To appoint assessors and agents:** To appoint any assessors, agents and/or tracing agents to assist, do work and give advice on my behalf. I also give authority to pay and settle all accounts in this regard;
10. **To appoint advocates and legal advisors:** To appoint any advocate and/or legal advisor to assist, give opinion and handle matters on my behalf. I also give authority to pay and settle all accounts in this regard;
11. **General power to act:** To do all that is necessary to finalize any matter and to act on my behalf in any manner that he/she considers necessary and in doing so, I confirm this Power is irrevocable. To generally for effecting the purposes aforesaid, to do or cause to be done whatsoever shall be requisite, and fully and effectively, for all intents and purposes, as I might or could do if personally present and acting herein /hereby ratifying, allowing and confirming and promising and agreeing to ratify, allow and confirm all and whatsoever my said Attorneys and Agents shall lawfully do, or cause to be done, by virtue of these presents.

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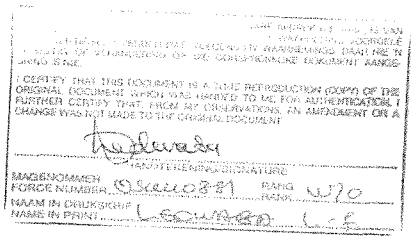
AND

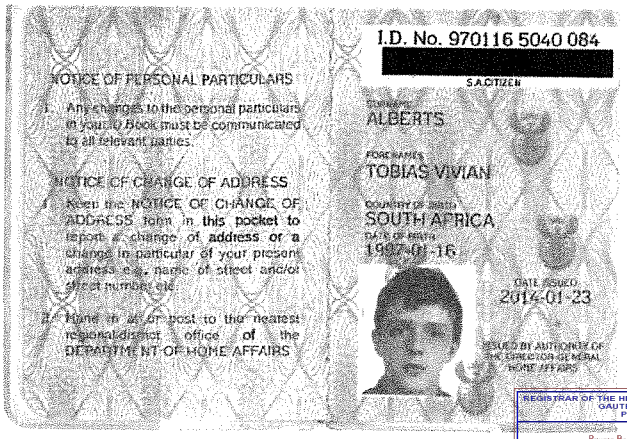
Ratification: I hereby ratify and agree to ratify everything which my Attorney or his/her substitute or substitutes or agent or agents appointed by the Attorney under this power of attorney shall do or purport to do by virtue of this power of attorney.

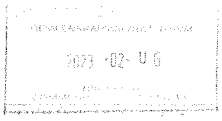
This done and signed at PRETORIA on this 24 day of JANUARY 2024.

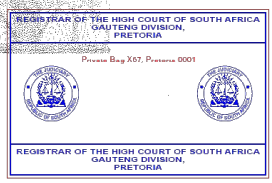
(signed) obo SAKELIGA NPC

KRIEK WASSENAAR & VENTER INC
DIRECTORS: J Kriek, PJ Wassenaar Reg: 2012/030418/21
3rd Floor, HB Forum Building, 13 Stamvrug Street, Val de Grace, Pretoria
(t) (012) 803 4719 (f) (086 596 8516 (e) peter@kriekprok.co.za


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TOBIAS VIVIAN
COUNTRY OF BIRTH
SOUTH AFRICA
DATE OF BIRTH
1997-01-16
DATE ISSUED
2014-01-23
ISSUED BY AUTHORITY OF THE DIRECTOR-GENERAL HOME AFFAIRS
NOTICE OF PERSONAL PARTICULARS
1. Any changes to the personal particulars in your ID Book must be communicated to all relevant parties.
NOTICE OF CHANGE OF ADDRESS
1. Keep the NOTICE OF CHANGE OF ADDRESS form in this pocket to report a change of address or a change in particular of your present address e.g., name of street and/or street number etc.
2. Hand in at or post to the nearest regional/district office of the DEPARTMENT OF HOME AFFAIRS


2023 -02- 06


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A2

From: Martin Boshoff
Date: 5/17/2024 12:52:00 PM
To: CoetzeeC@dot.gov.za; Nozipho Khuzwayo; paia@dot.gov.za
CC: Rohann Eloff
Subject: Sakeliga NPC - Air Service Licensing Council and other - QB1184
Attachments: PAIA Request ASLC - 2024-05-17.pdf;
Size: 3542.49 KB

Good day,

Please find attached our client's information request in terms of the Promotion of Access to Information Act.

Kind regards,

Martin



Martin Boshoff

Kriek Wassenaar & Venter Inc

Kandidaatprokureur / Candidate Attorney

• (t) (+27) 12 803 4719 • (f) (+27) 86 596 8797

• (a) 3de Vloer / 3rd Floor, HB Forum Gebou / Buidling, Stamvrugstraat 13 Stamvrug Street, Val de Grace, Pretoria, 0184

• (p) Postnet Suite #11, Privaatsak / Private Bag X025, Lynnwood Ridge, 0040 • BTW Reg: 4020260685 • Reg: 2012/030418/21

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C4

From: Martin Boshoff
Date: 6/28/2024 8:56:00 AM
To: CoetzeeC@dot.gov.za; paia@dot.gov.za
CC: Rohann Eloff; PhenyaM@dot.gov.za; Adam Masombuka; Sifiso Simelane; Nozipho Khuzwayo
Subject: Internal appeal: Sakeliga NPC - Air Service Licensing Council - QB1184
Attachments: Internal Appeal sent 2024-06-28.pdf;
Size: 4284.09 KB

Good day,

Please find attached the internal appeal for your attention.

Kind regards,

Martin



Martin Boshoff

Kriek Wassenaar & Venter Inc

Kandidaatprokureur / Candidate Attorney

• (t) (+27) 12 803 4719 • (f) (+27) 86 596 8797

• (a) 3de Vloer / 3rd Floor, HB Forum Gebou / Buidling, Stamvrugstraat 13 Stamvrug Street, Val de Grace, Pretoria, 0184

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