

10. May. 2006 8:07

No. 2870 P. 1

Save as: ratification

SC, PService
10
060513



**MINISTRY: TRANSPORT
REPUBLIC OF SOUTH AFRICA**

Private Bag X183, Pretoria, 0001. Tel: (012) 509 3131. Fax: (012) 328 3194
Private Bag X5128, Cape Town, 8000. Tel: (021) 465 7280/4. Fax: (021) 461 8645

ENQUIRIES: J MAKGATHO
Email: makgathj@dot.gov.za
Our Ref: Carriage by Air
Your ref: new matter

Mr R J Tau, MP
Chairperson: Select Committee on
Public Services
(National Council of Provinces)
Room V364 – 3rd Floor
Old Assembly Wing
Parliament of the Republic of South Africa
CAPE TOWN
8000



Dear Mr Tau

**RATIFICATION AND OR ACCESSION TO THE CONVENTION FOR THE
UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR**

The Department of Transport's briefing that was made to the Select Committee on Public Services (National Council of Provinces) on Wednesday, 03 May 2006, on the Convention for the Unification of Certain Rules for International Carriage by Air, refers.

We further refer to the questions that were posed by the Honorable Mr. C J van Rooyen, MP, wherein he asked the following:

1. "What are self executing provisions?"
2. "The meaning of self executing provisions in relations Section 231 (4) of the Constitution".

In keeping with the undertaking that the Department made on 03 May 2006, we hereby wish to respond as follows to the Member's questions:

Self executing provisions are those provisions of the treaty which:

- o do not require legislative and approval processes by the institutions of Parliament before they can be implemented. There is therefore no need to enact legislation in order to give effect to the treaty.

10. May. 2006 8:08

No. 2870 P. 2

"The meaning of self executing provisions in relations Section 231 (4) of the Constitution"

Our interpretation of this question is as follows:

The self-executing provisions of the treaty would apply as soon as the treaty has been approved and there will be no need for the legislation to be enacted to give effect to the provisions of the treaty. However, given the fact that in South Africa the provisions of the Constitution require that all treaties prior to being implemented must be incorporated in the legislation, the treaty can therefore not be self-executing without enacting legislation to give effect to it. It follows therefore that where there already exist legislation which is, The Carriage by Air Act of 1946 and is an Act of Parliament, which had brought the provisions of the Warsaw Treaty into effect, under these circumstances and because of the existence of this legislation, the Montreal Convention (replacing the Warsaw Convention) can therefore not be self executing without having to amend the legislation being The Carriage by Air Act of 1946.

In essence, self-executing provisions are therefore nullified by the fact that there is legislation in place, which gives effect to the treaty consistent with the requirements of the Constitution. Had there been no provisions of Section 231 (4) of the Constitution and therefore no Carriage By Air Act of 1946, the Montreal Convention would have been implemented without legislation being enacted.

Our legal advisor has confirmed this interpretation with the State Law Advisor albeit not the same advisor who had written the original opinion on the Montreal Convention.

In Conclusion, the Department has drafted the Carriage by Air Act No 17 of 1946 Amendment Bill, 2004 to give effect to the Montreal Convention and, as indicated in the meeting, the Department is ready to present the draft Amendment Bill at an appropriate period as will be indicated by the programme of Parliament.

We appreciate your assistance in these matters always, and request that you contact us in the event that further clarification on this specific matter or generally on other matters that the Department is seized with.

Kind regards



MS NONKULULEKO MSOMI
DEPUTY DIRECTOR GENERAL
TRANSPORT REGULATION AND PUBLIC ENTITY OVERSIGHT
DATE: 9/05/06

COPY TO:-
MR C J VAN ROOYEN, MP
MEMBER: SELECT COMMITTEE ON PUBLIC SERVICES

(NATIONAL COUNCIL OF PROVINCES)