

REVIEW OF THE SPACE AFFAIRS ACT NO. 84 OF 1993

Briefing for the Parliamentary Portfolio Committees of Trade & Industry and Science & Technology
12 May 2015

Department of Trade and Industry (the dti)

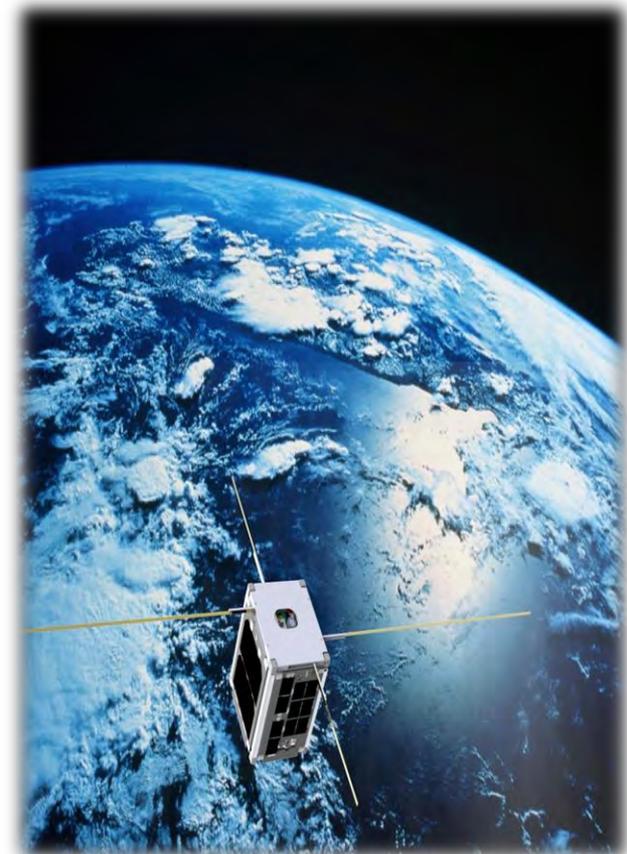


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PRESENTATION OVERVIEW



INTRODUCTION

- The Space Affairs Act No. 84 of 1993, as amended, (The Act) and its administration.
- The rationale and the need to review the current legislation

THE REVIEW PROCESS

- The study leading to the review
- Establishment of the Ad-hoc review committee
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- Summary findings

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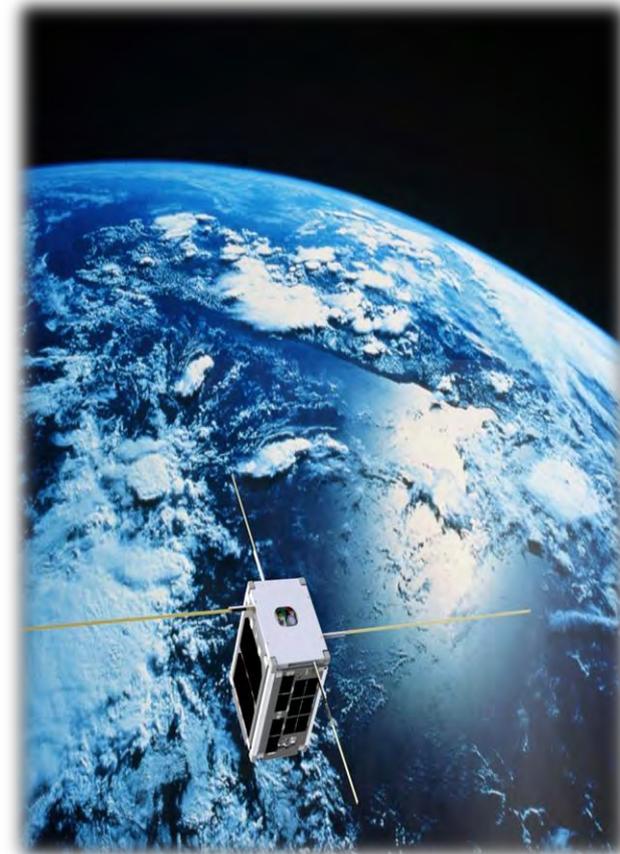
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THE SOUTH AFRICAN COUNCIL FOR SPACE AFFAIRS

CURRENT LEGISLATION: SPACE AFFAIRS ACT NO. 84 OF 1993, AS AMENDED



The main objects of the Act are:

- To establish the **National Space Policy** to be followed in the Republic
- To establish the **South African Council for Space Affairs (SACSA)** to **regulate space affairs** in the Republic
 - To **advise the Minister of Trade and Industry** on international obligations and related matters in space affairs;
 - To **authorise and supervise space activities** carried out within South Africa or by persons/entities under South African jurisdiction;
 - To establish and maintain a **national register of domestic space entities**;
 - To ensure **safety** of all space activities.



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RATIONALE FOR THE REVIEW OF THE SPACE AFFAIRS ACT NO. 84 OF 1993

❑ BACKGROUND

- ❑ The Department of Trade and Industry (**the dti**) has embarked on a process to review the current legislative and regulatory prescripts governing space activities in South Africa. The review is motivated, *inter alia*, by the following issues:
 - ❑ The developments in the national space arena since the enactment of the Act, with resulting changes to institutional mandates and responsibilities. *Examples include the SANSA Act (2008), National Space Policy (2008), National Space Science and Technology Strategy (2007), and the ratification of the Liability and Registration conventions by South Africa in 2011 and 2012, respectively.*
 - ❑ The increasing number and diversity of space actors in the Republic, and associated increase in the level of activities. *Examples include commercial and academic entities, both domestic and international.*
 - ❑ The developments in international space governance that need to be taken into account, in addition to the national obligations under the UN Treaties. *Examples include the new guiding principles and guidelines on contents of national legislation, guidelines for space debris mitigation, guidelines for safe uses of nuclear power sources in outer space and guidelines for the long-term sustainability of outer space activities.*
 - ❑ The need to put in place practical steps to promote industry participation in space activities.
- ❑ As a signatory to major United Nations Treaties on outer space, South Africa is required to align its regulatory framework with these international space treaties.

THE RATIONALE FOR THE REVIEW OF THE SPACE AFFAIRS ACT

- ❑ South Africa is party to the following treaties:
 - ❑ The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (the "Outer Space Treaty"), entered into force on 10 October 1967;
 - ❑ The Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (the "Rescue Agreement"), entered into force on 3 December 1968;
 - ❑ The Convention on International Liability for Damage Caused by Space Objects (the "Liability Convention"), entered into force on 1 September 1972;
 - ❑ The Convention on Registration of Objects Launched into Outer Space (the "Registration Convention"), entered into force on 15 September 1976;
- ❑ There are also eleven United Nations Principles on various aspects of space activities which are not legally binding, but are persuasive when considering international space law norms and regulations.
- ❑ South Africa is a member of the United Nations Committee on the Peaceful Uses of Outer Space (UN COPUOS), a subsidiary body of the General Assembly of the United Nations. The Committee is the focal point for international co-operation in civilian space activities and has a membership of 77 countries, which includes developing countries.

THE REVIEW PROCESS

- ❑ The process involves analyses of the suitability of the current legislative framework governing space activities in the Republic .
- ❑ In 2012, a Study leading to the review of the Act was commissioned to advise **the dti** to:
 - ❑ Scope the international best practices for the regulation of space activities and implementation of the current legislation;
 - ❑ Benchmark the current South African scenario with other countries;
 - ❑ Determine whether the enabling provisions are adequate to ensure the objectives of the Act can be met and are in line with the recent space developments in the country; and
 - ❑ Provide recommendations relating to possible amendments to strengthen the provisions of the Act and to add provisions where gaps have been identified for submission to **the dti** to take further required governmental procedures for the Review of the Act.
- ❑ Consultations with relevant stakeholders took place in 2013/14 and comments were received and considered.
- ❑ SACSA established an Ad Hoc Committee for the Review of the Act.
- ❑ Members of the Ad Hoc Committee for the Review:
 - Ms N Majaja (**the dti**)
 - Adv PP Sekhula (Adv of the High Court)
 - Mr L Petzer (DTPS)
 - Adv L Makapela (CSIR)
 - Dr V Munsami (DST)
 - Mr I Tshweza (SANSA)

THE REVIEW PROCESS

- An **Inter-Departmental Working Group for the Review of the Act** was established by **the dti**.
- Members were nominated from the following Departments / state agencies and an industry association to form part of the Working Group for the Review of the Act:
 - Department of Science and Technology (DST);
 - Department of International Relations and Cooperation (DIRCO);
 - Department of Defence (DoD);
 - Department of Justice and Constitutional Development (DoJ & CD);
 - South African National Space Agency(SANSA);
 - Department of Telecommunications and Postal Services (DTPS); and
 - Aerospace Maritime & Defence Industries Association (AMD);
- The first meeting of the Working Group took place on the 28 April 2015
- A decision was made to dissolve the Ad Hoc Committee (since most Depts were represented in both structures) and for the Working Group to continue guiding the process, providing substantive elements to the Drafting Team, which includes 2 legal practitioners, who are members of the Space Council, and a designated official from **the dti**.



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SUMMARY OF FINDINGS OF THE REVIEW



- ❑ South Africa's current space programme has outgrown the legislative framework foreseen in the SASAA;
- ❑ The current regulatory framework does not adequately address national developments and needs;
- ❑ The Act does not cover the regulation of space applications such as Earth observation, communications or navigation or the use of satellite derived information;
- ❑ There is a need for Regulations to clarify certain aspects of implementation of the Act.



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SUMMARY OF RECOMMENDATIONS OF THE REVIEW



- ❑ Space activities should encompass the launch, operation, guidance and re-entry of space objects into, in and from outer space;
- ❑ Separation between implementation and supervision of space activities is a current strength that should be maintained;
- ❑ A revised framework should reflect:
 - Domestic space priorities and policy objectives;
 - Commercialisation and industrialisation;
 - Linkages with other relevant legislation
 - (e.g. Electronic Communications Act, Non-Proliferation Act)
- ❑ The SACSA Secretariat should be strengthened to enable it to meet the increased demands for regulation and oversight of space activities.
- ❑ The Review process should clarify issues that need to be addressed in the Act and those to be addressed through Regulations issued under the Act.

SUBSTANTIVE PROVISIONS OF THE CURRENT ACT AND SHORTCOMINGS IDENTIFIED

There are several shortcomings that have been identified in the current legislation, which are summarised as follows:

A. Definitions

- There is a need to define terms (and also to reconsider terms) used in the Act, such as: Dual-purpose technologies; Launching; License; Outer space; Space activities; Spacecraft; Space industry; Space-related technologies; Suborbital trajectory; Weapons of mass destruction.

B. Scope of Application

- There is no actual provision on the scope and application of the Act. The general scope has to be deduced from Section 11 of the current Act which deals with licensing.
 - a) Launch of objects into outer space;
 - b) Operation and control of space objects in orbit;
 - c) Design and manufacture of space objects;
 - d) Operation of a launch facility and re-entry sites;
 - e) Re-entry of space objects.

SUBSTANTIVE PROVISIONS OF THE CURRENT ACT AND SHORTCOMINGS IDENTIFIED

C. Authorisation and Licensing

- Section 4 establishes the South African Council for Space Affairs (SACSA) as the national competent authority for the authorisation and supervision of space activities and Sections 11-15 provide for licensing processes.
 - All space activities can only be performed under the authority of a space license issued by the Council.
 - Conducting of any space activities without obtaining prior authorisation in accordance with the new Act constitutes an offence punishable by law.
 - An authorisation to conduct space activities shall be issued subject to such conditions as the Council may determine for that particular authorisation, taking into account
 - (a) The objects of the Act;
 - (b) The national interests of the Republic;
 - (c) The international obligations and responsibilities of the Republic.

Issues for consideration:

- Possible differentiation of licensing requirements, according to the nature of the application and/or applicants – e.g. Government, industry, and academic/research entities;
- Types of licences envisaged
 - a) Space Launch License
 - b) Space Facility License
 - c) Re-entry Permit



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SUBSTANTIVE PROVISIONS OF THE CURRENT ACT AND SHORTCOMINGS IDENTIFIED

D. Continuing Supervision of Space Activities

- Section 10 of the current Act provided for appointment, duties and powers of Inspectors. The new legislation is intended to require licensees to submit information concerning:
 - the launch and placement in orbit of the licensed space object;
 - the on-orbit commissioning plan and progress towards achieving this plan;
 - date of commencement of routine operations;
 - any orbital changes;
 - information regarding changes in the operational status of the space object or any loss of operational control;
 - the end-of-life disposal plan
- Furthermore the licensee must ensure that the licence is carried out in compliance with international obligations and responsibilities arising out of international conventions, treaties and international agreements to which the Republic is a Party. The licensee should notify the Council of the following :
 - any deviation, accidental or planned, from the conditions of a license;
 - any information which may affect the conditions of the license;
 - any changes in the ownership of the licensee, including changes in the composition and citizenship of the body corporate

(These measures are intended to strengthen the continued supervision of licensees (as required by international obligations) to ensure that any licence is used in accordance with the stipulated conditions.



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SUBSTANTIVE PROVISIONS OF THE ACT AND SHORTCOMINGS

E. Safety and Environmental Considerations

- Sections 11 and 15 refers to safety standards, but are not sufficiently detailed for effective clarity. These were left to be included in Regulations. Also provides conditions arising out of international obligations, such as Outer Space Treaty and the Liability Convention, and provides for the role of SACSA in case of accidents, while Section 9 provides for establishment of Boards of Inquiry.
- The new Bill includes
 - The Role of Boards of inquiry, safety inspectors and investigators with ongoing functions of investigating and avoiding accidents and ensuring compliance with conditions of licences issued by SACSA
 - Considerations relating to the implementation of voluntary UN guidelines recommended to States as good practice, such as UN COPUOS Space Debris Mitigation Guidelines and the UN/IAEA Safety Framework for Nuclear Power Sources in Outer Space.

F. Liability and Insurance

- Section 14 provides for the duties and liabilities of licensee and for insurance as conditions of a license. It also uses general language: e.g. “liability arising out of Treaties”. There is no specific third-party liability expressed as a requirement.
- Security may be required to meet obligations incurred.
- The new Bill envisages explicit inclusion of
 - Insurance requirements for authorised activities, including third party liability and
 - The determination of the amount of insurance in consultation with National Treasury
 - Recourse against Licensee and Insurer
 - Limit on Liability (to encourage industrial development)

SUBSTANTIVE PROVISIONS OF THE ACT AND SHORTCOMINGS

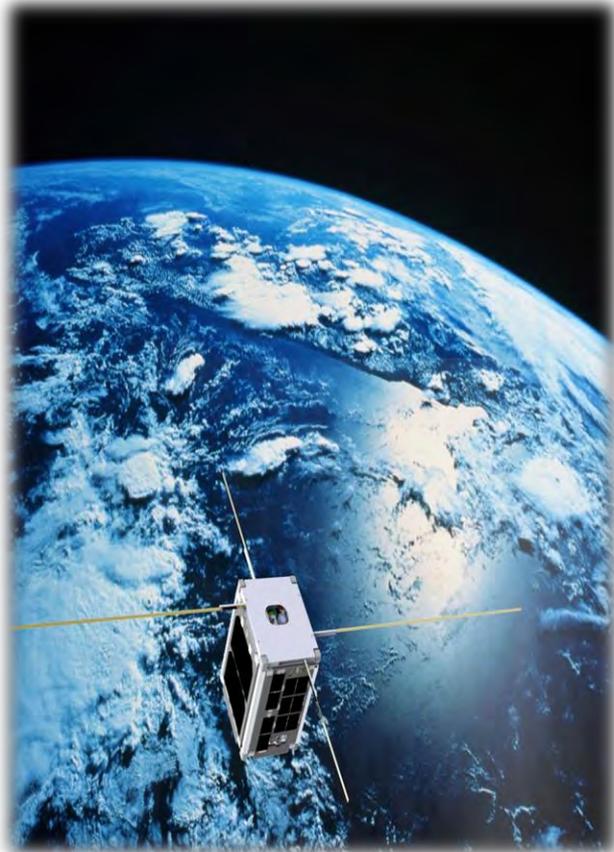
G. Registration

- In the current legislation, there is no provision for the registration of space objects.
- The new Bill will include :
- Provision for a National Registry of Space Objects, maintained by the Council and the mandatory nature of this registration, in alignment with obligations under the Registration Convention and other relevant international agreements.
 - Specific Information will be required for all space objects, including their general function, date and facility of the launch
 - The Council will in turn issue a unique registration number for each registered space object, for Identification purposes
 - The Register will be available for inspection by public for transparency purposes

H. In-Orbit Transfer of Ownership

- The current legislation makes no provision for transfer of ownership of space objects in orbit.
- The new Bill will address issues of transfer of ownership in orbit and spell out the conditions and process for notifying the regulator of changes in ownership and other changes of status that should be reflected in the national registry of space objects.

NEXT STEPS



- Continuation of public consultations and the drafting of the Bill with relevant Stakeholders:
 - Involvement of the State Law Advisors, the **dti**, DIRCO and DOJ; *continuing*
 - Tabling of the Bill to the relevant bodies;
 - Drafting of regulations;
 - First meeting of the Working Group 28 April 2015
 - Presentation to Portfolio Committee – 12 May 2015
- 2nd meeting of the Working Group – May 2015
- Preparation of the draft Bill – June 2015
- Public consultation – July or August 2015
- 3rd meeting of the Working group – September 2015
- Submission of the draft Bill to the Office of the Chief State Law Advisor

CONCLUSION

- ❑ The review of the space legislation is critical for South Africa in order to;
 - ❑ Support for the development of a local space industry (high tech and capital Intensive).
 - Effective and responsive licensing procedure;
 - ❑ Streamline and strengthen the interface with other relevant government departments, agencies and legislation;
 - ❑ Expand and clarify the scope of the Act:
 - Dual Use technology; and
 - Civil and military applications.
 - ❑ Safeguard public/national interests;
 - Improved regulatory and administrative support; and

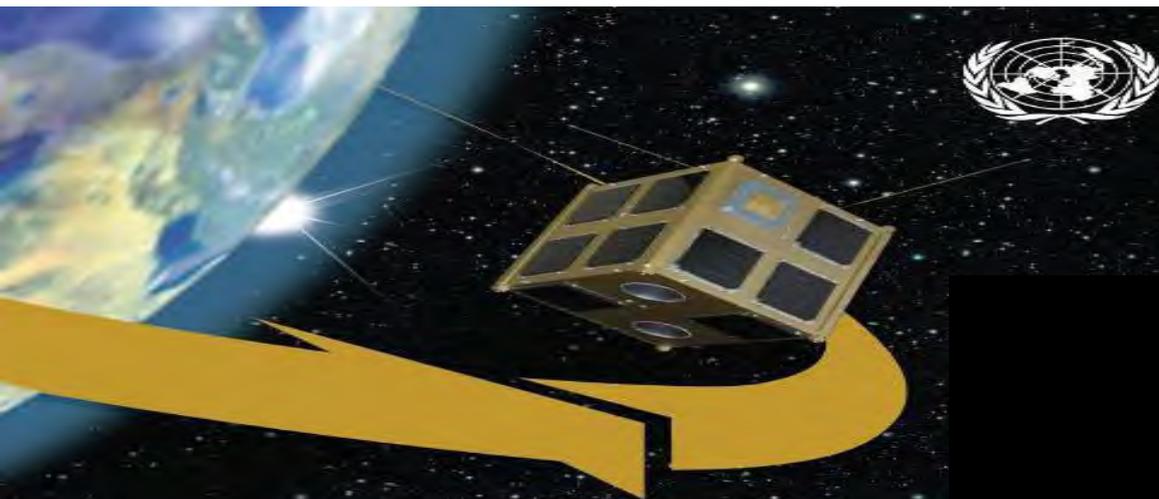
TWO UPCOMING SPACE EVENTS



66th International Astronautical Congress
12-16 October, 2015, Jerusalem, Israel



This Congress will have a special **Member of Parliament Event** on 10-11 October.



United Nations / South Africa SYMPOSIUM

Small satellites for scientific and
technological advancement

University of Cape Town
1-4 September 2015



THANK YOU

Ms N Majaja
Adv PP Sekhula
Prof P Martinez



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