



# Government Gazette



Vol. 461 Cape Town

27 May 2009

No. 32266

## THE PRESIDENCY

No. 616

27 May 2009

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**No. 13 of 2009: Civil Aviation Act, 2009.**



**AIDS HELPLINE: 0800-123-22 Prevention is the cure**

(English text signed by the President.)  
(Assented to 25 May 2009.)

## ACT

To repeal, consolidate and amend the aviation laws giving effect to certain International Aviation Conventions; to provide for the control and regulation of aviation within the Republic; to provide for the establishment of a South African Civil Aviation Authority with safety and security oversight functions, to provide for the establishment of an independent Aviation Safety Investigation Board in compliance with Annex 13 of the Chicago Convention, to give effect to certain provisions of the Convention on Offences and Certain other Acts Committed on Board Aircraft; to give effect to the Convention for the Suppression of Unlawful Seizure of Aircraft and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation; to provide for the National Aviation Security Program; to provide for additional measures directed at more effective control of the safety and security of aircraft, airports and the like; and to provide for matters connected thereto.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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1. (1) In this Act, unless the context otherwise indicates—

“**accredited representative**” means a person designated by a State, on the basis of his or her qualifications, for the purpose of participating in an aircraft accident or aircraft incident investigation conducted by another State;

“**aerodrome**” means any demarcated area on land or water or any building which is used or intended to be used, either wholly or in part, for the arrival or departure of an aircraft, and includes any building, installation or equipment within such area which is used or intended to be used in connection with the arrival, departure or movement of an aircraft; 35

- “**air carrier**” means a commercial air transport operator providing either a scheduled or a non-scheduled air service;
- “**aircraft**” means any machine that can derive support in the atmosphere from the reactions of the air, other than the reactions of the air against the surface of the earth; 5
- “**aircraft accident**” means the occurrence as defined in Chapter 1 of Annex 13 to the Convention;
- “**aircraft incident**” means an occurrence as defined in Chapter 1 of Annex 13 to the Convention;
- “**air navigation facility**” means any premises, structure or place to which the public have restricted access and in which a service is rendered for the operation of a designated airport or for the public at a designated airport, airport or heliport, and includes any aid provided for promotion of the safe, orderly and expeditious movement of air traffic, and, where applicable, any building or structure in or on which such aid or part thereof is housed or attached, and includes the premises on which such aid or part thereof is situated, whether such building, structure or premises is situated within the boundaries of a designated airport, airport or heliport or not; 10 15
- “**air navigation infrastructure**” means a navigation infrastructure as defined in the Air Traffic Navigation Services Company Act, 1993 (Act No. 45 of 1993); 20
- “**air service**” means an air service defined in Section 1 of the Air Licensing Act, 1999 (Act No. 115 of 1999);
- “**Air service operator**” means a commercial air transport operator providing one or more of the following namely, a scheduled, a non-scheduled or a general air service; 25
- “**Air Traffic Service**” means a service provided for the purpose of safe and efficient conduct of flight, expeditious and orderly flow of air traffic, assisting in aircraft search and rescue, and includes—
- (a) an aerodrome control service;
- (b) an approach control service; 30
- (c) an area control service;
- (d) an approach radar control service;
- (e) a flight information service;
- (f) an aerodrome flight information service;
- (g) an area radar control service; 35
- (h) an advisory service; and
- (i) an alerting service;
- “**Air traffic service unit**” means an air traffic control unit, flight information centre or air traffic service reporting office;”
- “**airport**” means an aerodrome as defined in section 1 of this Act; 40
- “**airport manager**” means any person appointed in writing by the management of a designated airport to act in such capacity or any person in control of an airport, and includes any person appointed in writing by the airport manager or the management of a designated airport to discharge any function imposed, or to exercise any power conferred, upon the airport manager by this Act; 45
- “**appeal committee**” means an appeal committee established in terms of section 122;
- “**appointed member**” means a member of the Civil Aviation Authority Board appointed by the Minister in terms of section 77;
- “**authorised officer**” means an officer designated in terms of section 88(1) of this Act; 50
- “**authorised person**” means—
- (a) any member of the Service as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995);
- (b) any person appointed in writing by the management of a designated airport, with the approval of the Minister or any person authorised by him or her to furnish such approval; 55
- (c) any member of the South African National Defence Force, as defined in paragraph (a) of the definition of ‘member’ in section 1 of the Defence Act, 2002 (Act No. 42 of 2002); 60
- (d) any person designated in writing by the Director as an authorised person in terms of section 88(1); or

- (e) any other person appointed in writing by the Minister as an authorised person for the purposes of this Act;
- “**aviation facility**” means premises for the handling of passengers, cargo, post or baggage, an aircraft hangar, a fuel storage area and any other premises, structure or place to which the public have no right of access and in which a service is rendered for the operation of a designated airport or aircraft or for the public at an airport or heliport, whether such building, structure or premises is situated within the boundaries of the airport or heliport or not; 5
- “**Aviation Safety Investigation Board**” means the Aviation Safety Investigation Board established in terms of section 10; 10
- “**board**” means a board of inquiry appointed under section 70;
- “**Civil Aviation Authority**” means the South African Civil Aviation Authority established in terms of section 71;
- “**Civil Aviation Authority Board**” means the Civil Aviation Authority Board established by section 75; 15
- “**commander**”, in relation to an aircraft, means the crew member designated as commander of that aircraft by the operator thereof, or, failing such a designation, the person who is at that time the pilot in command of that aircraft;
- “**company**” means the company as defined in section 1 of the Airports Company Act, 1993 (Act No. 44 of 1993); 20
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- “**Contracting State**” means any State which is a party to the Convention;
- “**controlled airspace**” means an airspace of defined dimensions within which an air traffic control service is provided to IFR (Instrument Flight Rules) flights and to VFR (Visual Flight Rules) flights in accordance with the airspace classification as prescribed by regulation; 25
- “**Convention**” means the Convention on International Civil Aviation drawn up in Chicago on 7 December 1944, as set out in Schedule 3, and includes any amendments and additions ratified and proclaimed in accordance with section 3(1)(b); 30
- “**Convention country**” means a country in which the Convention on Offences and Certain Other Acts Committed on Board Aircraft, the Convention for the Suppression of Unlawful Seizure of Aircraft or the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation is in force;
- “**Criminal Procedure Act**” means the Criminal Procedure Act, 1977 (Act No. 51 of 1977); 35
- “**Department**” means the National Department of Transport;
- “**designated airport**” means any company airport as defined in section 1 of the Airports Company Act, 1993 (Act No. 44 of 1993), and includes any airport, heliport or heliport designated by the Minister in terms of section 4(5); 40
- “**differences**” means the departures from international standards and procedures contained in Article 38 of the Convention;
- “**Director**” means the Director of Civil Aviation appointed in terms of section 85;
- “**Director-General**” means the Director-General of the Department of Transport;
- “**Director of Investigations**” means the Director of Investigations appointed in terms of section 26; 45
- “**financial year**”, in relation to the Civil Aviation Authority, means a period beginning on 1 April of a specific year and ending on 31 March of the following year;
- “**flight path**” means the line of an aircraft’s passage through the air; 50
- “**harmful article**” means—
- (a) any ammunition as defined in section 1 of the Firearms Control Act, 2000 (Act No. 60 of 2000), and includes any cartridge or projectile intended for use in the discharge of a fire-arm in terms of that Act;
- (b) any firearm as defined in section 1 of the Firearms Control Act, 2000 (Act No. 60 of 2000), and includes any firearm referred to in terms of that Act, any grenade, bomb or similar missile and any article which has the appearance of such a firearm or a grenade, bomb or similar missile, whether capable of being discharged or exploded or not; 55
- (c) explosives as defined in section 1 of the Explosives Act, 1956 (Act No. 26 of 1956), including explosives as defined in Article 1 of the Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1999, and includes any article which has the appearance of an explosive or which is 60

marked or labelled that it is or contains an explosive, whether such article is capable of explosion or of being exploded or not;

- (d) any cartridge as defined in section 1 of the Firearms Control Act, 2000 (Act No. 60 of 2000);
- (e) any device as contemplated in section 5 of the Firearms Control Act, 2000 (Act No. 60 of 2000); or
- (f) any other article, device or instrument which is reasonably believed to be capable of being used to endanger life or property or any other article which is a dangerous weapon as defined in section 1 of the Dangerous Weapons Act, 1968 (Act No. 71 of 1968);

**“heliport”** means a defined area on any land or building, which is intended to be used for, or in connection with, the arrival, departure or movement of helicopters, and includes any building, installation or equipment within such area;

**“helistop”** means an aerodrome and any defined area or a structure intended or designed to be used either wholly or partly for the landing, departure and surface movement of helicopters;

**“identifying and notifying of differences”** means the process whereby Contracting States in terms of Article 38 of the Convention identify and notify other Contracting States of any differences between national regulations and practices and the international standards contained in the Annexes to the Convention;

**“Inquests Act”** means the Inquests Act, 1959 (Act No. 58 of 1959);

**“inspector”** means an inspector designated in terms of section 88(1);

**“investigator”** means a person appointed under section 26;

**“military conveyance”** means the transportation of goods or persons by means of an aircraft that is operated by or on behalf of the Department of Defence or a visiting force;

**“Minister”** means the Minister of Transport;

**“missed approached procedure”** means the procedure to be followed if the approach cannot be continued;

**“NASP”** means the National Aviation Security Program compiled and developed by the Department in compliance with Annex 17 to the Convention;

**“oath”** includes an affirmation or declaration;

**“operator”** means a person or artificial entity, holding a valid licence and operating certificate or equivalent thereof authorising such person to conduct scheduled, non-scheduled or general air services and airline, air carrier, air service operator or commercial air transport operator has the same meaning as defined;

**“organ of state”** means—

- (a) any national or provincial department;
- (b) a municipality contemplated in section 151 of the Constitution; or
- (c) any functionary or institution exercising a power or performing a function in terms of the Constitution, or a provincial constitution referred to in section 142 of the Constitution;

**“participant”** means any person who participates in or who renders services to the aviation industry or aviation in general;

**“pilot in command”** in relation to an aircraft, means the person who is in charge of the piloting of the aircraft;

**“political office bearer”** means a member of Parliament, a member of a provincial legislature, a diplomatic representative of the Republic who is not an officer of the State in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994), a member of a municipal council, a member of a house or council of traditional leaders, or any paid official of a political party, alliance or movement;

**“premises”** includes any aerodromes, hangars, approved maintenance organisations, workshops, ramps, fuel storage, operator offices, cargo handling areas, vehicles and aviation training organisations;

**“prescribed”** means prescribed by regulation;

**“proclamation”** means any proclamation issued under this Act;

**“Protocols”** means the instruments that govern the application of the Convention issued by the International Civil Aviation Organisation and ratified by Member States;

**“Public Finance Management Act”** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

**“Recipient State”** means all States that participate in an aircraft accident or aircraft incident investigation including the State instituting the investigation, the

- State of Registry, the State of the Operator, the State of Design, the State of Manufacture, any State having suffered fatalities or serious injuries to its citizens and any State that provided relevant information, significant facilities or experts; **“registered owner”** in relation to an aircraft means the person in whose name the aircraft is registered, and includes any person who is or has been acting as an agent in the Republic for a foreign owner, or any person by whom the aircraft is hired at the time; 5
- “regulation”** means any regulation made under this Act;
- “Republic”** means the Republic of South Africa including any territory and territorial waters in respect of which Parliament is competent to legislate; 10
- “restricted area”** means any area, building or place at a designated airport, in respect of which access control has been instituted for security purposes by, or with the concurrence of the management of such designated airport, or in respect of which the Minister has directed the management of the designated airport, or any organisation conducting business at a designated airport, to institute access control and in respect of which access control has been so instituted; 15
- “search”** with the exception of Chapter 4, includes hand searches of luggage or the use of metal detectors for persons and metal detectors, X-ray equipment and explosive detecting equipment for personal effects, baggage, vehicles, cargo, mail and other goods for the purpose of screening; 20
- “South African aircraft”** means an aircraft registered in the Republic and includes any aircraft that is operated by joint air transport operating organisations or international operating agencies established by the State and any other convention country and that is declared by the Minister by notice in the *Gazette*, to be a South African aircraft; 25
- “State of Design”** refers to the state having jurisdiction over an organisation responsible for the type of design of an aircraft;
- “State of Manufacture”** refers to the state having jurisdiction over an organisation responsible for the final assembly of an aircraft;
- “State of Occurrence”** means the state in whose territory an aircraft accident or aircraft incident occurs; 30
- “State of Registry”** means the state on whose register the aircraft is registered;
- “State of the Operator”** means the State in which the operator’s principal place of business is located or, if there is no such place of business, the operator’s permanent residence; 35
- “technical standard”** in relation to civil aviation regulations, means a standard published under the authority of the Director that specifies the technical requirements, data, information or guidance relating to an acceptable means of compliance with such regulation;
- “this Act”** includes any Schedule to this Act or regulation made under this Act; 40
- “Transit Agreement”** means the International Air Services Transit Agreement drawn up at Chicago on 7 December 1944, and set out in Schedule 4.
- (2) The definition of “aerodrome” in subsection (1) does not derogate from the ordinary meaning of the word “airport”.
- (3) For the purposes of this Act an aircraft is regarded to be in flight— 45
- (a) from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation or, if the aircraft makes a forced landing, until the moment when the competent authorities of the country in which the forced landing takes place, take over the responsibility for the aircraft and for the persons and property on board; or 50
- (b) during any period when it is on the surface of the sea or land but not within the territorial limits of any country.
- (4) (a) For the purposes of this Act an aircraft is regarded to be in service from the start of the pre-flight preparation of such aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing. 55
- (b) The entire period during which the aircraft is in flight in terms of subsection (3) is included for the purpose of paragraph (a).

## CHAPTER 2

**APPLICATION OF ACT, POWER TO CARRY OUT AND APPLY  
CONVENTION, TRANSIT AGREEMENT AND PROTOCOL, FUNCTIONS OF  
MINISTER IN CONNECTION WITH ACT AND CONVENTION AND  
TRANSIT AGREEMENT**

5

**Application of Act**

2. (1) This Act, the Convention, the Transit Agreement and Protocol, except where expressly excluded under this Act, apply to—
- (a) every aircraft, aerodrome, air navigation facility, aviation facility, designated airport, operators, passengers or any person boarding an aircraft or entering an aerodrome, air navigation facility, aviation facility or designated airport and registered owners of aircraft in the Republic; 10
  - (b) every person employed at or in connection with such aerodrome, air navigation facility, aviation facility or designated airport;
  - (c) all foreign registered aircraft and personnel of such aircraft operating in the Republic or over the territorial waters thereof; and 15
  - (d) all South African aircraft and personnel of such aircraft, whether within or outside the Republic.
- (2) For the purpose of subsection (1) the personnel of an aircraft is regarded to include the commander or any other person in charge of the aircraft, and all the other members of the crew of the aircraft. 20
- (3) This Act, the Convention and the Transit Agreement do not apply to—
- (a) an aircraft belonging to the South African National Defence Force and the South African Police Service;
  - (b) airports, heliports or helistops belonging to the South African National Defence Force and the South African Police Service; 25
  - (c) an aircraft or airports in use exclusively by the South African National Defence Force or South African Police Service, or to any person employed on or in connection with such aircraft or airports, irrespective of whether such person is so employed in a military or civil capacity: Provided that the Minister, after consultation with the Minister of Defence or the Minister of Safety and Security, as the case may be, may by notice in the *Gazette* apply any of the said provisions with or without modification to any such aircraft, aerodrome or person; and 30
  - (d) an aircraft used by customs services. 35
- (4) Notwithstanding subsection (3), Part 1 of Chapter 11 and the Civil Aviation Regulations, 1997, apply to—
- (a) an aircraft belonging to the South African National Defence Force and South African Police Service; and
  - (b) an aircraft in use exclusively by the South African National Defence Force and South African Police Service, 40
- where such aircraft are in flight through controlled airspace or in use at non-military aerodromes and heliports.

**Power to carry out and apply Convention, Transit Agreement and Protocol**

3. (1) The Minister, in consultation with the Civil Aviation Authority, may— 45
- (a) do all things necessary to ratify, or cause to be ratified on behalf of the Republic, any amendments of or additions to the Convention, the Transit Agreement or Protocol which may be made; and

(b) by proclamation in the *Gazette*, declare that the amendments or additions so ratified must be observed and have the force and effect of law in the Republic.

(2) Copies of any amendments or additions ratified and proclaimed in terms of subsection (1)(b) must be tabled for inspection in Parliament within 14 days after the publication of the relative proclamation in the *Gazette*, if Parliament is in ordinary session or, if it is not in ordinary session, within 14 days after the commencement of its next ensuing ordinary session. 5

#### **Functions of Minister in connection with Act, Convention and Transit Agreement**

4. (1) The Minister is responsible for the carrying out of this Act, the Convention and the Transit Agreement. 10

(2) Every person appointed under or concerned with the carrying out of this Act, excluding members of the South African National Defence Force or the South African Police Service, must perform his or her functions and exercise any discretion expressly or impliedly vested in him or her in a manner which gives effect to this Act.

(3) With the written consent of the Minister any person in whom any discretion is vested as is contemplated in subsection (2), may delegate the power to exercise such discretion on his or her behalf to any other specified person. 15

(4) The Minister must designate the Civil Aviation Authority as the appropriate authority for the purposes of carrying out the functions of this Act and Convention and set strategic goals for the Civil Aviation Authority. 20

(5) The Minister may, in addition to the company airports defined in section 1 of the Airports Company Act, 1993 (Act No. 44 of 1993), by notice in the *Gazette*, designate any other airport for the purposes of this Act.

#### **Enactment of Convention, Transit Agreement and Protocol**

5. (1) The Convention, the Transit Agreement and Protocol referred to in Schedules 3 and 4, respectively, have, subject to this Act, the force of law in the Republic. 25

(2) The Minister may by notice in the *Gazette* amend Schedules 3 and 4 to reflect any changes made to the Convention, the Transit Agreement and Protocol if those changes are binding on the Republic in terms of section 231 of the Constitution.

### **CHAPTER 3** 30

#### **PART 1**

#### **ACQUISITION OF LAND AND RIGHTS IN CONNECTION WITH AIRPORTS AND CONSULTATION WITH INTERESTED PARTIES**

##### **Acquisition of land and rights in connection with airports**

6. (1) The Minister may out of moneys appropriated by Parliament for the purpose— 35

(a) of ensuring that proper effect is given to this Act, acquire land and interests in and rights to and over land adjoining or adjacent to any airport in respect of which a licence under the regulations has been or is to be issued; and

(b) acquire land and interests in and rights to and over land for the purpose of the erection and maintenance of warning lights and other aids to safety in air navigation (including pipe lines or power lines or the like, whether underground or overhead, required in connection with such lights or other aids) which are considered necessary in connection with any airport in respect of which a licence under the regulations has been or is to be issued. 40

(2) In acquiring land in terms of subsection (1)(a) and (b) the Minister must consult with all interested parties prior to such acquisition. 45

## PART 2

**PERMISSION TO USE LAND HELD UNDER ANY RECONNAISSANCE  
PERMISSION, EXPLORATION, PROSPECTING OR MINING  
AUTHORISATION OR PERMISSION FOR AIRPORTS, CONSULTATION  
WITH INTERESTED PARTIES, TRESPASS, NUISANCE AND  
RESPONSIBILITY FOR DAMAGE**

5

**Permission to use land held under any reconnaissance permission, exploration, prospecting or mining authorisation or permission for airports**

7. (1) Subject to the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), the National Environmental Management Act, 1998 (Act No. 107 of 1998), the National Water Act, 1998 (Act No. 36 of 1998), and the Constitution, the Minister of Minerals and Energy may permit the use of land held under any reconnaissance permission, exploration, prospecting or mining authorisation or permission, for the establishment of airports or heliports. 10

(2) Before granting any permission in terms of subsection (1) for the use of land held under any reconnaissance permission, exploration, prospecting or mining authorisation or permission for the establishment of airports or for landing places for aircraft, the Minister of Minerals and Energy must consult with the Minister and all interested parties. 15

**Trespass, nuisance, responsibility for damage and insurance for damage or loss by registered owners and operators of aircraft** 20

8. (1) No action lies in respect of trespass or in respect of nuisance, by reason only of the flight of aircraft over any property at a height, which, having regard to wind, weather and other circumstances of the case, is reasonable, or the ordinary incidents of such flight, so long as this Act, the Convention and the Transit Agreement are duly complied with. 25

(2) Where material damage or loss is caused by—

(a) an aircraft in flight, taking off or landing;

(b) any person in any such aircraft; or

(c) any article falling from any such aircraft. 30

to any person or property on land or water, damages may be recovered from the registered owner of the aircraft in respect of such damage or loss, without proof of negligence or intention or other cause of action as though such damage or loss had been caused by his or her wilful act, neglect or default.

(3) Subsection (2) does not apply where the damage or loss was caused by or contributed to by the negligence or wilful act of the person by whom it was suffered. 35

(4) Where any damages recovered from or paid by the registered owner of an aircraft under this section arose from damage or loss caused by the wrongful or negligent action or omission of any person other than the registered owner or some person in his or her employment, the registered owner is entitled to recover from that person the amount of such damages. 40

(5) A registered owner or operator of an aircraft must have insurance as prescribed for any damage or loss that is caused by an aircraft to any person or property on land or water.



## CHAPTER 4

## PART 1

**AIRCRAFT ACCIDENTS AND AIRCRAFT INCIDENTS, ESTABLISHMENT OF AVIATION SAFETY INVESTIGATION BOARD IN COMPLIANCE WITH CONVENTION, JURISDICTION OF AVIATION SAFETY INVESTIGATION BOARD AND OBJECTS OF AVIATION SAFETY INVESTIGATION BOARD** 5

**Application of Chapter to aircraft accidents and aircraft incidents**

9. (1) This Chapter applies in respect of aircraft accidents and aircraft incidents in or over—

- (a) the Republic; 10
- (b) any place that is under the Republic's air traffic control; and
- (c) any other place, if—
  - (i) the Republic is requested to investigate the aircraft accident and aircraft incident by an appropriate authority in terms of the Convention; or
  - (ii) the aircraft accident and aircraft incident involves an aircraft in respect of which, or that is operated by a person to whom, a South African aviation authorisation, aviation certificate or any aviation approval document has been issued. 15

(2) The application of this Chapter in respect of aircraft accidents and aircraft incidents referred to in section 12(4) is subject to such restrictions in the interests of national security as are provided in the Defence Act, 2002 (Act No. 42 of 2002), or as prescribed by the Minister. 20

(3) In this Chapter "department" means any department in the national sphere of Government.

**Establishment of Aviation Safety Investigation Board** 25

10. The Aviation Safety Investigation Board, which is a juristic person, is hereby established.

**Objects of Aviation Safety Investigation Board**

11. (1) The objects of the Aviation Safety Investigation Board are to advance aviation transportation safety by— 30

- (a) conducting independent investigations, including, when necessary, public inquiries into selected aircraft accidents and aircraft incidents in order to make findings as to their causes and contributing factors; 30
- (b) identifying safety deficiencies as evidenced by aircraft accidents and aircraft incidents; 35
- (c) making recommendations designed to eliminate or reduce any such safety deficiencies;
- (d) reporting publicly on its investigations and on the findings in relation thereto;
- (e) promoting compliance with the provisions and procedures of Annex 13 to the Convention; 40
- (f) investigating aircraft accidents and aircraft incidents in compliance with the provisions and procedures of Annex 13 to the Convention; and
- (g) discharging all other functions and obligations in compliance with the provisions and procedures of Annex 13 to the Convention. 45

(2) The Aviation Safety Investigation Board must not apportion blame or liability in any report following the investigation of any aircraft accident or aircraft incident, and the sole objective of the investigation is accident prevention.

(3) In making its findings as to the causes and contributing factors of an aircraft accident and an aircraft incident, it is not the function of the Aviation Safety Investigation Board to assign fault or determine civil or criminal liability, but the Board must not refrain from fully reporting on the causes and contributing factors merely because fault or liability might be inferred from the Aviation Safety Investigation Board's findings. 50

(4) No finding of the Aviation Safety Investigation Board must be construed as assigning fault or determining civil or criminal liability.

(5) The findings of or the evidence before the Aviation Safety Investigation Board are not binding on the parties to any legal, disciplinary or any other proceedings and may not be used in any civil, criminal or disciplinary proceedings against persons giving such evidence. 5

(6) Where the causes and contributing factors of any aircraft accident or aircraft incident is known to the Aviation Safety Investigation Board it may refuse to investigate such aircraft accident or aircraft incident.

(7) Subject to the provisions of the South African Maritime and Aeronautical Search and Rescue Act, 2002 (Act No. 44 of 2002), and the Convention, the South African Police Service, shall have rights of prior access to any scene of an aircraft accident or aircraft incident. 10

### **Jurisdiction of Aviation Safety Investigation Board**

12. (1) Notwithstanding any other legislation, the Aviation Safety Investigation Board must, in compliance with Annex 13 to the Convention, investigate any aircraft accident and aircraft incident for the purpose of carrying out its objects. 15

(2) Notwithstanding any other legislation—

(a) no department, other than the Department of Defence, may commence an investigation into an aircraft accident or aircraft incident for the purpose of making findings as to its causes and contributing factors, if— 20

(i) that aircraft accident or aircraft incident is being or has been investigated by the Aviation Safety Investigation Board under this Act; or

(ii) the Department has been informed that that aircraft accident or aircraft incident is proposed to be investigated by the Aviation Safety Investigation Board under this Act; and 25

(b) where an investigation into an aircraft accident or aircraft incident is commenced by the Aviation Safety Investigation Board under this Act after an investigation into that aircraft accident or aircraft incident has been commenced by a department other than the Department of Defence, that department must forthwith discontinue its investigation, to the extent that it is an investigation for the purpose of making findings as to the causes and contributing factors of the aircraft accident or aircraft incident. 30

(3) Subsection (2) does not prevent—

(a) a department from commencing an investigation into or continuing to investigate an aircraft accident or aircraft incident for any purpose other than that of making findings as to its causes and contributing factors, or from investigating any matter that is related to the aircraft accident or aircraft incident and that is not being investigated by the Aviation Safety Investigation Board; or 35 40

(b) the South African Police Service from investigating the aircraft accident or aircraft incident for any purpose for which it is empowered to conduct investigations.

(4) The Aviation Safety Investigation Board may investigate an aircraft accident and aircraft incident that involves— 45

(a) a military conveyance and an aircraft, none of which is a military conveyance;

(b) a military conveyance and a civil aviation facility; or

(c) a military aviation facility and an aircraft, none of which is a military conveyance.

(5) Where the Aviation Safety Investigation Board does not investigate an aircraft accident or aircraft incident, no department is prevented from investigating any aspect of the aircraft accident or aircraft incident that it is empowered to investigate. 50

(6) The Aviation Safety Investigation Board must not inquire into any aircraft accident or aircraft incident in respect of which a prosecution, an inquest or an inquiry by a commission has been established by the Minister which was instituted or completed before the commencement of this Act. 55

### **Coordination of investigations and remedial actions**

13. (1) Where, at any time during an investigation into an aircraft accident or aircraft incident under this Act, a department other than the Department of Defence investigates

that aircraft accident or aircraft incident, or undertakes remedial measures with respect to that aircraft accident or aircraft incident, the Aviation Safety Investigation Board and such department must take all reasonable measures to ensure that their activities with respect to that aircraft accident or aircraft incident are coordinated.

(2) Where conflicting interests arise between the Aviation Safety Investigation Board and a department in coordinating their activities pursuant to subsection (1), the requirements and interests of the Aviation Safety Investigation Board, subject to subsection (3) and any agreement entered into under section 27, take precedence and are paramount to the extent of the conflict. 5

(3) No item in subsection (2) gives the requirements and interests of the Aviation Safety Investigation Board precedence over those of the South African Police Service, or prevents a department from taking emergency remedial measures under any other legislation. 10

(4) Where an aircraft accident or aircraft incident referred to in subsection (1) is being investigated by the Aviation Safety Investigation Board, the Department of Defence, the South African Police Service or a visiting force, the Aviation Safety Investigation Board and the Minister of Defence must take all reasonable measures to ensure that the investigations are coordinated. 15

### **Compatible procedures and practices**

14. (1) The Aviation Safety Investigation Board must take all reasonable measures to ensure that the investigation procedures and practices that it follows in relation to aircraft accidents and aircraft incidents are compatible with— 20

(a) any international agreements or Conventions to which the Republic is a party; and

(b) investigation procedures and practices followed by the judicial inquests in terms of the Inquests Act. 25

(2) The Aviation Safety Investigation Board must make all reasonable efforts to enter into agreements in order to ensure that the procedures and practices followed by the Aviation Safety Investigation Board are compatible as far as possible with those followed by the judicial inquests in terms of the Inquests Act. 30

## **PART 2**

### **APPOINTMENT OF MEMBERS AND STAFF OF AVIATION SAFETY INVESTIGATION BOARD, PROCEDURE AND REQUIREMENTS IN APPOINTING MEMBERS, FILLING OF VACANCIES, REMUNERATION AND DUTIES OF MEMBERS AND CONFLICT OF INTEREST OF MEMBERS** 35

#### **Procedure and requirements in appointing members of Aviation Safety Investigation Board, filling of vacancies and term of office**

15. (1) The Aviation Safety Investigation Board consists of a Chairperson, Deputy Chairperson and three other members appointed in accordance with the following principles, namely- 40

(a) participation by the public in the nomination and evaluation process; and  
(b) transparency and openness taking into account the objects and principles of this Act.

(2) (a) Before the members of the Board are appointed, the Minister must, through the media, invite members of the public to apply or nominate persons for appointment to the Aviation Safety Investigation Board and who comply with the criteria contemplated in subsection (3). 45

(b) The Minister must after receipt of the nominations and applications contemplated in paragraph (a) invite at least four aviation experts and the Director to assist in the selection and evaluation of members eligible for appointment to the Aviation Safety Investigation Board. 50

(c) The aviation experts referred to in paragraph (b) must compile a shortlist consisting of no more than ten persons.

(d) The aviation experts must submit the shortlist to the Department for publication in the *Gazette* for public comment for a period of not less than 30 days, and the Department must notify Parliament accordingly.

(e) The Minister must, after the period allowed for public comment and consideration thereof as contemplated in paragraph (d), appoint the members as referred to in subsection (1) from a list compiled by the aviation experts. 5

(f) The Minister must, within 30 days from the date of appointment of the members of the Aviation Safety Investigation Board, notify Parliament of such appointment and publish such appointment in the *Gazette*.

(g) The aviation experts contemplated in paragraph (b) may include— 10

(i) a person with knowledge of and experience in the aviation industry;

(ii) a person with knowledge of and experience in aviation accident and incident investigations;

(iii) a person with a legal background; and

(iv) a person with civil aviation acknowledged technical competencies involved in organised labour from the aviation industry. 15

(h) An aviation expert contemplated in paragraph (b) receives such remuneration or allowances as may be determined by the Minister after consultation with the Minister of Finance.

(3) Members appointed to the Aviation Safety Investigation Board must be persons who— 20

(a) are committed to fairness, freedom of expression, openness and accountability on the part of those entrusted with the governance of a public service;

(b) when viewed collectively be knowledgeable of aviation transportation having regard to the following factors: 25

(i) Technical knowledge in matters relating to civil aviation;

(ii) special skills, professional standing, expertise or experience in matters concerning civil aviation; and

(iii) possess suitable qualifications, expertise and experience in the field of aviation accident and incident investigation or any other relevant expertise or qualifications; and 30

(c) have proven knowledge in accident reconstruction, safety engineering, civil aviation safety or transportation regulations.

(4) In fixing a term of appointment or reappointment, the Minister must endeavour to ensure, to the extent that it is practical to do so, that, notwithstanding periodic changes in the membership of the Aviation Safety Investigation Board, it remains constituted of persons who have had previous experience as members of the Board. 35

(5) Any vacancy on the Aviation Safety Investigation Board arising by virtue of the provisions of section 16(3) or caused by the death of a member, or for any other reason must, be filled by the appointment by the Minister in terms of section 15(2) of another person for the unexpired portion of the period for which the vacating member was appointed. 40

(6) The Minister may appoint from the list contemplated in subsection (2) (d) any eligible person to act—

(a) in any member's stead; or 45

(b) in a temporary capacity in any vacancy in the Aviation Safety Investigation Board, for such period as the Minister may determine.

(7) The Chairperson and Deputy Chairperson are full time members and are appointed by the Minister for a term of five years and may on the expiration of such term be eligible for one further term only. 50

(8) A member of the Aviation Safety Investigation Board is a part time member and must hold office for a term not exceeding three years and is on expiration of such member's term of office eligible for reappointment.

#### **Disqualification and removal of members of Aviation Safety Investigation Board**

**16.** (1) A person may not be appointed as a member of the Aviation Safety Investigation Board if he or she— 55

(a) is not permanently resident in the Republic;

(b) is a public servant or the holder of any other remunerated position under the State;

(c) is a member of Parliament, any provincial legislature or any municipal council; 60

- (d) is an office-bearer or employee of any party, movement or organisation of a party-political nature;
- (e) or his or her family member has a direct or indirect financial interest in the aviation industry;
- (f) or his or her business partner or associate holds an office in or with, or is employed by, any person or body, whether corporate or unincorporated, which has an interest contemplated in paragraph (e);
- (g) is an unrehabilitated insolvent;
- (h) has been declared by a court to be mentally ill or disordered;
- (i) has at any time been convicted, whether in the Republic or elsewhere, of—
- (i) theft, fraud, forgery or uttering a forged document, perjury, an offence in terms of the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any other offence involving dishonesty; or
  - (ii) an offence under this Act;
- (j) has been sentenced, after the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), to a period of imprisonment of not less than one year without the option of a fine; or
- (k) has at any time been removed from an office of trust on account of misconduct.
- (2) A person who is subject to a disqualification contemplated in subsection (1)(b) to (h) may be nominated for appointment as a member of the Aviation Safety Investigation Board, but may only be appointed if at the time of such appointment he or she is no longer subject to that disqualification.
- (3) Subject to subsection (4), a member of the Aviation Safety Investigation Board may be removed from office on account of—
- (a) misconduct;
  - (b) inability to perform the duties of his or her office efficiently;
  - (c) absence from three consecutive meetings of the Aviation Safety Investigation Board without the permission of the Chairperson of the Aviation Safety Investigation Board, except on good cause shown;
  - (d) his or her failure to disclose an interest in terms of subsection (1)(e) or (f);
  - (e) him or her becoming disqualified as contemplated in subsection (1)(b) to (k); or
  - (f) his or her refusal to sign a performance agreement.
- (4) A member of the Aviation Safety Investigation Board may be removed from office by the Minister—
- (a) if such member repeatedly fails to perform the duties of office efficiently;
  - (b) if, due to any physical or mental illness or any other cause, such member becomes incapable of performing the functions of that office or performs them inefficiently; or
  - (c) for misconduct.
- (5) The member vacates his or her office immediately if he or she—
- (a) is convicted—
    - (i) whether in the Republic or elsewhere of murder, robbery, theft, fraud, forgery or uttering a forged document, perjury or any offence involving dishonesty; or
    - (ii) of any offence in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), the Companies Act, 1973 (Act No. 61 of 1973), Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), the Public Finance Management Act or of contravening this Act;
  - (b) is convicted of an offence during his or her term of office and sentenced to a period of imprisonment without the option of a fine; or
  - (c) becomes a political office bearer.

**Performance management system**

**17.** (1) The Minister must establish a performance management system to monitor and evaluate the performance of the members of the Aviation Safety Investigation Board.

(2) The performance management system must— 5

(a) set appropriate key performance indicators as a yardstick for measuring performance;

(b) set measurable performance targets; and

(c) set a procedure to measure and review performance at least once a year.

(3) As soon as is practicable after the appointment of the members of the Aviation Safety Investigation Board a performance agreement must be concluded between the members of the Aviation Safety Investigation Board and the Minister. 10

(4) The evaluation of the performance of the members of the Aviation Safety Investigation Board must be conducted by a panel constituted by the Minister.

(5) The panel contemplated in subsection (4) must, after an evaluation of the members of the Aviation Safety Investigation Board, submit a report to the Minister for consideration. 15

(6) The Minister must cause copies of the report submitted to him or her in terms of subsection (5) to be tabled in Parliament within 14 days of receipt of that report, or, if Parliament is not then in session, within 14 days after commencement of its next ensuing session. 20

**Remuneration, fees and expenses of members of Aviation Safety Investigation Board**

**18.** (1) The Chairperson and other appointed members of the Aviation Safety Investigation Board must be paid the remuneration and other allowances that are determined by the Minister as determined in consultation with the Minister of Finance. 25

(2) The members and the staff of the Aviation Safety Investigation Board are entitled to be paid reasonable travel and living expenses incurred by them in the course of their duties as may be prescribed by rule from time to time.

**Duties of Chairperson** 30

**19.** The Chairperson of the Aviation Safety Investigation Board has exclusive responsibility for managing personnel matters, financial matters, property matters and for all other aspects of the internal management of the Aviation Safety Investigation Board, including—

(a) directing the staff and apportioning the work of the Aviation Safety Investigation Board; 35

(b) directing the members and apportioning their work, subject to section 25; and

(c) convening meetings in accordance with section 21 and presiding at meetings in accordance with any rules made under section 31(3).

**Chairperson may delegate powers and duties** 40

**20.** (1) Subject to any limitations specified in the instrument of delegation the Chairperson may—

(a) delegate to any member any power or duty of the Chairperson relating to—

(i) convening or presiding at meetings; or

(ii) directing the members or apportioning their work; and 45

(b) delegate to the staff of the Aviation Safety Investigation Board any power or duty of the Chairperson under this Act, except the matters described in paragraph (a).

(2) A delegation under subsection 1(a) may be revoked in writing at any time by the Chairperson. 50

**Meetings and quorum of Aviation Safety Investigation Board**

**21.** (1) The Aviation Safety Investigation Board must meet not less than 12 times a year.

(2) The Chairperson convenes meetings of the Aviation Safety Investigation Board whenever the work of the Aviation Safety Investigation Board so requires or whenever 55

the Chairperson is requested in writing to do so by two or more other members of the Aviation Safety Investigation Board.

(3) In the event of the absence or incapacity of the Chairperson, or if the office of Chairperson is vacant, a member designated by the Minister acts as Chairperson during the continuance of that absence or incapacity or until a new Chairperson is designated. 5

(4) Three members of the Aviation Safety Investigation Board forms a quorum.

#### **Expenditure in connection with execution of functions and objects of Aviation Safety Investigation Board**

22. The expenditure in connection with the execution of the functions of the Aviation Safety Investigation Board must be paid out of money appropriated by Parliament for such purpose. 10

#### **Public Finance Management Act binds Aviation Safety Investigation Board**

23. The Aviation Safety Investigation Board must comply with the provisions of the Public Finance Management Act.

#### **Conflict of interest 15**

24. (1) A member of the Aviation Safety Investigation Board may not, directly or indirectly, as owner, shareholder, director, officer, partner or otherwise—

- (a) be engaged in an aviation undertaking or business; or
- (b) have an interest in an aviation undertaking or business or an interest, financial or otherwise, in the manufacture or distribution of aviation plant or equipment, except where the distribution is merely incidental to the general merchandising of goods. 20

(2) Any member of the Aviation Safety Investigation Board or any member of the staff or accredited representatives, experts and advisers of the Aviation Safety Investigation Board or his or her spouse, immediate family member, life partner or business associate, may not hold any direct or indirect financial interest in any civil aviation activity or the civil aviation industry without prior approval of the Minister, which approval is open to inspection by the public at the office of the Aviation Safety Investigation Board during business hours. 25

(3) Where any interest referred to in subsection (1) vests in a member for the benefit of the member by way of gift, will, and succession or otherwise, the interest must, within three months after the vesting, be disposed of by that member. 30

(4) During the term of office of a member, in addition to the prohibitions described in this section, the member of the Aviation Safety Investigation Board must not carry on any activity inconsistent with the performance of the member's duties under this Act. 35

#### **Duties of members of Aviation Safety Investigation Board**

25. (1) The members of the Aviation Safety Investigation Board, at meetings convened in accordance with section 21, must—

- (a) make rules regarding the conduct of business at meetings of the Aviation Safety Investigation Board; 40
- (b) establish policies with regard to the classes of aircraft accidents and aircraft incidents to be investigated;
- (c) establish, either generally or in relation to specific classes of aircraft accidents and aircraft incidents, policies to be followed in the conduct of investigations;
- (d) review reports submitted to them by the Director of Investigations mentioned in section 26(1) and, after such review, may require the Director of Investigations to conduct further investigation with respect to any aspect of an aircraft accident or aircraft incident; 45
- (e) determine the Aviation Safety Investigation Board's findings as to the causes and contributing factors of aircraft accidents or aircraft incidents; 50
- (f) identify any safety deficiencies as evidenced by aircraft accidents or aircraft incidents; and
- (g) make such recommendations as they consider appropriate.

- (2) The Aviation Safety Investigation Board must make available to the public any policies established pursuant to subsection (1)(b) or (c).
- (3) The Aviation Safety Investigation Board must within the time required by the Public Finance Management Act submit to the Minister an annual report pertaining to the financial state of affairs of the Aviation Safety Investigation Board as at the end of the immediately preceding financial year, consisting of— 5
- (a) a balance sheet, an income statement and a cash-flow statement which is a true and correct reflection of the state of affairs of the Aviation Safety Investigation Board as at the end of that financial year;
  - (b) a report by the Aviation Safety Investigation Board in accordance with subsection (4); 10
  - (c) a report by the auditor of the Aviation Safety Investigation Board in accordance with subsection (5); and
  - (d) any other statement or report which the Minister or the Minister of Finance may require. 15
- (4) The report of the Aviation Safety Investigation Board referred to in subsection (3)(b) must deal with the state of affairs, the activities and operations and the financial position of the Aviation Safety Investigation Board, and must—
- (a) state the extent to which the Aviation Safety Investigation Board has achieved or advanced its objectives during the financial year concerned and specifically the detailed objectives of the business and financial plan; 20
  - (b) contain relevant performance information regarding the economic, efficient and effective application of resources and specifically a comparison between planned and actual performance indicators as set out in the business and financial plan; and 25
  - (c) indicate the amount of money, if any, received from the State and any other commitment furnished by the State.
- (5) The auditor's report referred to in subsection (3)(c) must state separately in respect of each of the following matters whether in the auditor's opinion—
- (a) the balance sheet, income statement and cash-flow statement, as well as any other furnished information, fairly represent the financial position and results obtained by the Aviation Safety Investigation Board in accordance with generally accepted accounting practice, as applied on a basis consistent with that of the preceding year; 30
  - (b) the information furnished in terms of paragraph (a) is fair in all material respects and, if applicable, on a basis consistent with that of the preceding year; 35
  - (c) the transactions of the Aviation Safety Investigation Board that had come to the auditor's notice in the course of his or her examination were made in accordance with this Act, the Public Finance Management Act and any applicable directives or regulations made thereunder; 40
  - (d) the transactions that had come to his or her attention during auditing were in all material respects in accordance with the objects and functions of the Aviation Safety Investigation Board;
  - (e) there are adequate measures and procedures for the proper application of sound economic, efficient and effective management; and 45
  - (f) attention should be drawn to any other matter falling within the scope of the auditor's examination which, in his or her opinion, should in the public interest be brought to the notice of the Minister and Parliament.
- (6) The Minister must cause copies of the annual report submitted to him or her in terms of subsection (3) to be tabled for inspection in Parliament within 14 days of receipt of that report, or, if Parliament is not then in session, within 14 days after commencement of its next ensuing session. 50
- (7) A copy of the annual report submitted to the Minister in terms of subsection (3) must be open to inspection by the public at the head office of the Aviation Safety Investigation Board during business hours. 55

#### **Appointment of staff of Aviation Safety Investigation Board**

26. (1) The Aviation Safety Investigation Board must at its first meeting or as soon as practicable thereafter, after consultation with the Minister, appoint a Director of



Investigations, other investigators and such staff as are necessary for the proper conduct of the work of the Aviation Safety Investigation Board.

(2) The Chairperson of the Aviation Safety Investigation Board is responsible for the management of, and administrative control over, the staff appointed in terms of subsection (1). 5

(3) In the performance of its administrative and secretarial functions under this Act, the Aviation Safety Investigation Board is assisted by officers in the public service made available for such purpose by the Director-General. 5

(4) (a) The Aviation Safety Investigation Board, may, in the exercise of its powers and the performance of its functions in terms of this Act, the Constitution or any other law, enter into contracts for the purpose of obtaining the services of persons having technical or specialised knowledge of civil aviation or any other related field. 10

(b) The Aviation Safety Investigation Board with the concurrence of the Minister of Finance annually determine the remuneration, including reimbursement for travelling, subsistence and other expenses, of the persons referred to in paragraph (a). 15

(5) Every person employed by the Aviation Safety Investigation Board must preserve secrecy with regard to any matter or information that may come to his or her knowledge in the performance of his or her duties, except where the publication of such matter or information is necessary for the purpose of the report of the Aviation Safety Investigation Board. 20

(6) If there would be no conflict of interest created, the Chairperson may engage on a temporary basis the services of persons having technical or specialised knowledge to assist the Aviation Safety Investigation Board in carrying out its duties under this Act, and may pay them such remuneration and expenses as the Aviation Safety Investigation Board may determine. 25

#### **Agreements between Aviation Safety Investigation Board and Director**

27. (1) The Aviation Safety Investigation Board and the Director may enter into agreements with regard to—

- (a) the secondment of staff of the Director to the Aviation Safety Investigation Board for purposes of rendering any assistance during any investigation of any aircraft accidents or aircraft incidents; and 30
- (b) any other matter relating or incidental to the investigation of aircraft accidents and aircraft incidents by the Aviation Safety Investigation Board.

(2) When entering into such agreements the parties must avoid a conflict of interest.

(3) The Aviation Safety Investigation Board must make all efforts to enter into agreements with Ministers responsible for departments— 35

- (a) providing for the coordination of activities between the Aviation Safety Investigation Board and departments with respect to aircraft accidents and aircrafts incidents, including investigation procedures and practices and requirements for reporting aircraft accidents and aircrafts incidents; and 40
- (b) providing for procedures to be followed in the event that conflicting interests arise between the Aviation Safety Investigation Board and a department during their activities with regard to aircraft accidents and aircraft incidents.

#### **Remuneration of staff of Aviation Safety Investigation Board**

28. (1) An appointed member of staff of the Aviation Safety Investigation Board receives such remuneration and allowances as may be determined by the Minister in consultation with the Minister of Finance. 45

(2) Different scales of remuneration, allowances, benefits or privileges may be determined under subsection (1) in respect of the different members of staff of the Aviation Safety Investigation Board. 50

### **Independence and impartiality of Aviation Safety Investigation Board**

**29.** (1) The members, staff and accredited representatives, experts and advisers of the Aviation Safety Investigation Board must serve impartially and independently and exercise, carry out and perform their powers, duties and functions in good faith and without fear, favour, bias or prejudice, subject only to this Act and the Convention. 5

(2) The Aviation Safety Investigation Board must function without any political or commercial interference.

(3) A member of the Aviation Safety Investigation Board, member of staff, accredited representatives, experts and advisers of the Aviation Safety Investigation Board may not conduct an investigation in terms of this Act or render assistance with regard to a matter in which he or she has any pecuniary or other interest which might preclude him or her from exercising his or her powers or from carrying out or performing duties and functions in a fair, unbiased and proper manner. 10

(4) If any member of the Aviation Safety Investigation Board, any member of staff, accredited representatives, experts and advisers of the Aviation Safety Investigation Board fail to disclose an interest contemplated in subsection (3), the Aviation Safety Investigation Board may take such steps as it considers necessary to ensure a fair, unbiased and proper investigation. 15

### **PART 3**

## **FUNCTIONS AND POWERS OF AVIATION SAFETY INVESTIGATION BOARD, POWERS OF DIRECTOR OF INVESTIGATIONS AND INVESTIGATORS, NOTIFICATION OF AIRCRAFT ACCIDENTS AND AIRCRAFT INCIDENTS BY DEPARTMENTS AND ATTENDANCE AND OBSERVERS AT INVESTIGATIONS** 20

### **Functions of Aviation Safety Investigation Board** 25

- 30.** (1) The functions of the Aviation Safety Investigation Board are to—
- (a) take steps to achieve the objects as contemplated in section 11 of this Act;
  - (b) investigate aircraft accidents and aircraft incidents in compliance with Annex 13 to the Convention;
  - (c) advise any authority or Contracting State, State of Registry, State of the Operator, State of Design and State of Manufacture with regard to any safety recommendation or safety matter prior to the completion of any investigation; 30
  - (d) oversee and exercise general control over the performance of the functions and of the activities of the persons appointed or designated by it to perform the work of the Aviation Safety Investigation Board; 35
  - (e) submit to the Minister within three months after completion of an investigation a final report on its findings;
  - (f) submit a final report to all recipient States in compliance with Chapter 6 of Annex 13 to the Convention concerning any aircraft accident or aircraft incident investigated by the Aviation Safety Investigation Board; and 40
  - (g) monitor the implementation of safety recommendations as issued by Contracting States.

### **Powers of Aviation Safety Investigation Board**

- 31.** (1) The Aviation Safety Investigation Board may do all that is necessary or expedient to perform its functions effectively, which includes the power to— 45
- (a) determine its own staff establishment subject to section 26, having due regard to available funds;
  - (b) obtain, by agreement, the services of any person, including any organ of state, for the performance of any specific act or function;

- (c) acquire or dispose of any right in or to property, but ownership in immovable property may be acquired or disposed of only with the consent of the Minister;
- (d) investigate aircraft accidents and aircraft incidents;
- (e) determine categories of aircraft accidents and aircraft incidents that will be investigated by the Aviation Safety Investigation Board; 5
- (f) make rules for the internal procedure for the investigation of aircraft accidents and aircraft incidents by the Aviation Safety Investigation Board;
- (g) delegate, the investigation of any aircraft accident or aircraft incident to any other Contracting State, in accordance with Annex 13 to the Convention;
- (h) collect and disseminate relevant information; 10
- (i) reopen any investigation in compliance with Annex 13 to the Convention;
- (j) establish an aircraft accident and aircraft incident reporting system in compliance with Annex 13 to the Convention to facilitate the collection of information on actual or potential safety deficiencies;
- (k) upon request conduct investigations on behalf of other contracting States; 15
- (l) open and operate its own bank accounts;
- (m) insure itself against any loss, damage or risk;
- (n) perform legal acts, including acts in association with or on behalf of any other person or organ of state;
- (o) institute or defend any legal action; and 20
- (p) do anything that is incidental to the exercise of any of its powers.
- (2) If the accident occurred within the Republic, the Aviation Safety Investigation Board has the power to—
- (a) summon and examine witnesses under oath and to call for the production and inspection of books, logs, certificates, licences, medical records and other documents, and may grant inspection thereof; and 25
- (b) summon any person to give evidence before it, or to produce any official document or such other information or object as may be necessary for the performance of the Aviation Safety Investigation Board's functions.
- (3) The Aviation Safety Investigation Board may make rules in relation to the conduct and procedure of its meetings. 30
- (4) The Aviation Safety Investigation Board may make rules in relation to the reporting, investigation of aircraft accidents and aircraft incidents and the conduct and procedures of its investigations, including the participation of accredited representatives, advisers, experts and observers, in compliance with Annex 13 to the Convention. 35
- (5) The Aviation Safety Investigation Board may authorise any of its members to act as the Aviation Safety Investigation Board's accredited representative where the Republic is not the State of Occurrence, and such accredited representative may be accompanied by advisers and experts as the Aviation Safety Investigation Board may consider necessary. 40
- (6) The Aviation Safety Investigation Board may authorise any of its members to act on its behalf in any matter.
- (7) The Aviation Safety Investigation Board may, with the approval of the Minister and in consultation with the Minister of Finance, raise money by way of loans.
- (8) When the Aviation Safety Investigation Board finds it impracticable to comply in all respects with any international standard or procedure it must give notice to all the relevant interested parties in terms of Article 38 to the Convention. 45
- (9) The Aviation Safety Investigation Board may make rules in relation to the following matters concerning the staff of the Aviation Safety Investigation Board:
- (a) subject to the determination as contemplated in section 28(1) the different categories of salaries and scales of salaries which will apply to the different categories of staff; 50
- (b) the requirements for appointment, promotion, discharge and disciplinary steps;
- (c) the recognition of appropriate qualifications and experience for the purposes of appointment to a specific post; 55
- (d) the procedure and criteria for evaluation, and the conditions or requirements for promotion;

- (e) conduct, discipline, hours of attendance and leave of absence, including leave gratuity, and other conditions of service;
- (f) the creation of posts on the establishment of the Aviation Safety Investigation Board;
- (g) the training of staff, including financial assistance for such training; 5
- (h) a code of conduct to be complied with by staff;
- (i) the provision of official transport;
- (j) the conditions on which and the circumstances under which remuneration for overtime duty and travel, subsistence and other allowances may be paid;
- (k) the legal liability emanating from the use of official transport; 10
- (l) the circumstances under which and the conditions on and the manner in which a member of staff may be found guilty of misconduct, or to be suffering from continued ill health, or to be incapable of carrying out his or her duties of office efficiently.

#### **Powers of Director of Investigations** 15

**32.** (1) The Director of Investigations has exclusive authority to direct the conduct of investigations on behalf of the Aviation Safety Investigation Board under this Act in relation to aircraft accidents and aircraft incidents, but—

- (a) the Director of Investigation's authority under this subsection must be exercised in accordance with any policies established under section 25(1)(b) and (c); and 20
- (b) the Director of Investigations shall report to the Aviation Safety Investigation Board with regard to investigations and shall conduct such further investigation as the Aviation Safety Investigation Board requires under section 25(1)(d). 25

#### **Designation and powers of investigators**

**33.** (1) The Director of Investigations may designate an investigator in charge and any number of investigators to investigate any aircraft accident or aircraft incident in the Republic.

- (2) An investigator designated in terms of subsection (1) has authority to— 30
  - (a) have unrestricted access to and control over an aircraft which has been involved in an aircraft accident or aircraft incident, the wreck or wreckage, the place where the aircraft, the wreck or wreckage is located and the places where marks resulting from the aircraft accident or aircraft incident which may be of assistance in an investigation, are located; 35
  - (b) preserve an aircraft which has been involved in an aircraft accident or aircraft incident or the wreck or wreckage, any remains and any marks resulting from the aircraft accident or aircraft incident which may be of assistance in the investigation, by any means available, including photographic means;
  - (c) examine an aircraft involved in an aircraft accident or aircraft incident, the wreck or wreckage, any part or component thereof or any item transported therein or any marks resulting from the aircraft accident or aircraft incident which may be of assistance in the investigation, and to remove any such aircraft, wreck or wreckage, or any part or component thereof or any item transported therein for the purpose of the investigation or for an inquiry in terms of section 69 or 70; 40 45
  - (d) compile reports in connection with the investigation;
  - (e) have unrestricted access to all documents, including relevant medical records, books, notes, photographs, recordings and transcripts which the investigator-in-charge may consider necessary for the investigation and which must be produced without delay by the possessor thereof when so requested; 50
  - (f) obtain information and take statements, from any person, which may be necessary for the investigation;

- (g) have unrestricted access to and control over all relevant evidence, including flight recorders and air traffic service recordings;
- (h) summon and examine witnesses under oath and call for the production, and grant inspection, of books, logs, certificates, licences and other documents, including medical information and records, and summon any person to give evidence before it or to produce any official document or such other information or object as may be necessary for the performance of the Aviation Safety Investigation Boards functions; and 5
- (i) regulate, prohibit and control any access to the accident scene or the accident scene of any aircraft accident or aircraft incident. 10
- (3) An investigator who is investigating an aircraft accident or aircraft incident may—
- (a) where the investigator believes on reasonable grounds that a person is in possession of information relevant to that investigation—
- (i) by notice in writing signed by the investigator, require the person to produce the information to the investigator or to attend before the investigator and give a statement referred to in subsection (2)(f) under oath or solemn affirmation if required by the investigator; and 15
- (ii) make such copies of or take such extracts from the information as the investigator considers necessary for the purposes of the investigation;
- (b) where the investigator believes on reasonable grounds that the medical examination of a person who is directly or indirectly involved in the operation of an aircraft, or may be relevant to the investigation, by notice in writing signed by the investigator require the person to submit to a medical examination; 20
- (c) where the investigator believes on reasonable grounds that a physician or other health practitioner has information concerning a patient that is relevant to that investigation, by notice in writing signed by the investigator require the physician or practitioner, if so authorised by the patient or such physician or practitioner, to provide that information to the investigator; or 25
- (d) where the investigator believes on reasonable grounds that the performance of an autopsy on the body of a deceased person, or the carrying out of other medical examinations of human remains, is or may be relevant to the conduct of the investigation, cause such an autopsy or medical examination to be performed and, for that purpose, by notice in writing signed by the investigator, require the person having custody of the body of the deceased person or other human remains to permit the performance of that autopsy or that medical examination. 30
- (4) The requirement under subsection (3) that a person submit to a medical examination shall not be construed as a requirement that the person submit to any procedure involving surgery, perforation of the skin or any external tissue or the entry into the body of any drug or foreign substance. 40
- (5) Where an investigator has required a person to do something under subsection (3)(a), (b), (c) or (d) and the person has refused to do as required, the investigator may make an application to a court of competent jurisdiction, setting out the facts, and the court may inquire into the matter and, after giving the person an opportunity to comply with the requirement, take steps for the punishment of the person as if the person had been guilty of contempt of the court, or may make such other order as it finds appropriate. 45

#### **Search and seizure by appointed investigators**

- 34.** (1) In the execution of the authority contemplated in section 33 an investigator may search and seize any property or item, including medical records, recorders and air traffic service recordings of an aircraft accident or aircraft incident without a warrant. 50
- (2) An investigator in respect of this Act is considered to have been appointed as a peace officer by the Minister for Justice and Constitutional Development in terms of section 334 of the Criminal Procedure Act for the Republic, and for the purpose of exercising the powers contemplated in sections 40, 41, 44, 45, 46, 47, 48, 49 and 56 of the Criminal Procedure Act. 55

- (3) In the execution of the authority contemplated in section 33 an investigator may without a warrant search and seize any property or item, including medical records, recorders and air traffic service recordings of an aircraft accident or aircraft incident—
- (a) if the person concerned consents to the search for and the seizure of the property or item, including medical records, recorders and air traffic service recordings of an aircraft accident in question, or if the person who may consent to the search of the premises consents to such search and the seizure of the property or item, including medical records, recorders and air traffic service recordings of an aircraft accident articles in question; or 5
  - (b) if he on reasonable grounds believes— 10
    - (i) that a search warrant will be issued to him if he applies for such warrant; and
    - (ii) that the delay in obtaining such warrant would defeat the object of the search without a warrant.
- (4) An investigator may use the powers in terms of this section only to serve the purposes of this Act and matters incidental thereto, and must take the necessary steps to secure the safekeeping of the property or items seized. 15

#### Power to test items seized

35. (1) Where any item is seized by an investigator under section 34, the investigator— 20
- (a) may, subject to paragraph (b), cause such tests, including tests to destroy, to be conducted on the item as are necessary for the purposes of the investigation in respect of which the item was seized;
  - (b) must, to the extent that it is practical and safe to do so and does not unreasonably impede the progress of the investigation, take all reasonable measures to invite the owner of the item, and any person who appears on reasonable grounds to be entitled to it, to be present at any tests referred to in paragraph (a); and 25
  - (c) subject to the need to conduct such tests, shall cause the item to be preserved pending its return in accordance with section 37. 30
- (2) Nothing in this section must be taken—
- (a) to imply that an item seized pursuant to subsection (1) may not be an aircraft or any part thereof; or
  - (b) to authorise the exercise of a power by an investigator in circumstances where the exercise of that power would be inconsistent with the objective of the investigation. 35

#### Certificate to be produced

36. Before acting under this section, an investigator must, on request, produce the investigator's certificate of appointment issued by the Chairperson of the Aviation Safety Investigation Board to any person in relation to whom the investigator acts. 40

#### Return of seized property

37. (1) Any item seized pursuant to section 34, except on-board recordings as defined in section 47, must, unless—
- (a) the owner thereof or a person who appears on reasonable grounds to be entitled to it consents in writing; or 45
  - (b) a court of competent jurisdiction orders otherwise,
- be returned to that owner, person, or the person from whom it was seized, as soon as possible after it has served the purpose for which it was seized.
- (2) A person from whom any item was seized pursuant to section 34, except on-board recordings as defined in section 47, or the owner or any other person who appears on 50

reasonable grounds to be entitled thereto, may apply to a court of competent jurisdiction for an order that the seized item be returned to the person making the application.

(3) Where, on an application under subsection (2) of this section, the court is satisfied that the seized item has served the purpose for which it was seized or should, in the interests of justice, be returned to the applicant, the court may grant the application and order the seized item to be returned to the applicant, subject to any terms or conditions that appear necessary or desirable to ensure that the item is safeguarded and preserved for any purpose for which it may subsequently be required by the Aviation Safety Investigation Board under this Act. 5

(4) This section does not apply in respect of any item seized and tested to destruction in accordance with section 35. 10

### Public inquiry

38. (1) Where, in the course of an investigation of an aircraft accident or aircraft incident, the Aviation Safety Investigation Board considers it necessary that a public inquiry be made into the aircraft accident or aircraft incident, the Chairperson may designate a person or persons, who may be, or may include, the Chairperson, to conduct a public inquiry into that aircraft accident or aircraft incident in accordance with any rules made under section 31 and to report to the Aviation Safety Investigation Board thereon. 15

(2) Any person designated to conduct a public inquiry under this section has and may exercise the powers of a person appointed as an investigator, subject to any restrictions specified in the designation. 20

### Notification of department of aircraft accident or aircraft incident and investigation by department

39. (1) Where a department is notified of an aircraft accident or aircraft incident in which such department has a direct interest and which the Aviation Safety Investigation Board has the power to investigate under this Act, that department must— 25

(a) forthwith provide the Aviation Safety Investigation Board with particulars of the aircraft accident or aircraft incident; and

(b) forthwith, after complying with paragraph (a), advise the Aviation Safety Investigation Board of any investigation that a department plans to conduct and of any remedial measures that a department plans to take. 30

(2) An investigator authorised by the Chairperson of the Aviation Safety Investigation Board may attend as an observer at an investigation conducted by a department referred to in subsection (1) or during the taking of remedial measures by that department following an aircraft accident or aircraft incident. 35

(3) Subject to any other Act the Aviation Safety Investigation Board must, on request, be provided with and may review and comment on any interim or final report prepared in respect of an investigation conducted by a department referred to in subsection (1)(b).

### Notification of Minister of department having direct interest in aircraft accident or aircraft incident by Aviation Safety Investigation Board 40

40. Where the Aviation Safety Investigation Board is notified of an aircraft accident or aircraft incident, it must—

(a) forthwith provide particulars of the aircraft accident or aircraft incident to any Minister responsible for a department having a direct interest in the aircraft accident or aircraft incident; and 45

(b) forthwith after complying with paragraph (a), advise the Minister referred to in paragraph (a) of any investigation that it plans to conduct and the scope of the investigation.

### **Attendance and removal of observers at aircraft accident and aircraft incident investigations**

- 41.** (1) Subject to any conditions that the Aviation Safety Investigation Board may impose, a person may attend as an observer at an investigation of an aircraft accident or aircraft incident conducted by the Aviation Safety Investigation Board if the person— 5
- (a) is designated as an observer by the Minister responsible for a department having a direct interest in the subject matter of the investigation;
  - (b) has observer status or is an accredited representative or an adviser to an accredited representative, pursuant to an international agreement or convention relating to transportation to which the Republic is a party; or 10
  - (c) is invited by the Aviation Safety Investigation Board to attend as an observer because, in the opinion of the Aviation Safety Investigation Board, the person has a direct interest in the subject matter of the investigation and will contribute to achieving the Aviation Safety Investigation Board's objects.
- (2) The Aviation Safety Investigation Board may remove an observer from an investigation if the observer contravenes any condition imposed by the Aviation Safety Investigation Board on the observer's presence or if, in the Aviation Safety Investigation Board's opinion, the observer has a conflict of interest that impedes the conduct of the investigation. 15

## **PART 4**

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### **REPORTING ON COMPLETION OF ANY AIRCRAFT ACCIDENT OR AIRCRAFT INCIDENT INVESTIGATION**

#### **Rights of affected parties, making representations and publication of report**

- 42.** (1) On completion of any investigation, the Aviation Safety Investigation Board must prepare and make available to the public a report on its findings, including any safety deficiencies that it has identified and any recommendations that it considers appropriate in the interests of aviation safety. 25
- (2) Before making public a report under subsection (1) the Aviation Safety Investigation Board must—
- (a) send a copy of the draft report on its findings and any safety deficiencies that it has identified to each department and any other person who, in the opinion of the Aviation Safety Investigation Board, has a direct interest in the findings of the Aviation Safety Investigation Board; 30
  - (b) give that department or interested person a reasonable opportunity to make representations to the Aviation Safety Investigation Board with regard to the draft report before the final report is prepared; and 35
  - (c) comply with the provisions of Annex 13 to the Convention.
- (3) The period for submission of any representations must be not less than 60 days.
- (4) No person may communicate or use the draft report or permit its communication or use for any purpose, other than the taking of remedial measures, not strictly necessary to the study of, and preparation of representations concerning, the draft report. 40
- (5) The Aviation Safety Investigation Board must provide an interim report on the progress and findings of an investigation—
- (a) on written request made in respect of that investigation, to any Minister responsible for a department having a direct interest in the subject matter of the investigation; and 45
  - (b) to any coroner investigating the aircraft accident or aircraft incident, where the aircraft accident or aircraft incident involved a fatality and significant progress has been made in the Aviation Safety Investigation Board's investigation. 50



(6) A person, other than a Minister of a department, who is provided with an interim report under subsection (5) must not use the report or permit its use for any purpose not strictly necessary to the examination of the report.

(7) The Aviation Safety Investigation Board must reconsider its findings and recommendations pursuant to an investigation that it has conducted under this Act where, in its opinion, new material facts appear. 5

#### **Manner of dealing with representations**

43. (1) The Aviation Safety Investigation Board must—

- (a) receive representations made to it pursuant to section 42 in any manner the Aviation Safety Investigation Board considers appropriate; 10
- (b) keep a record of those representations;
- (c) consider those representations before preparing its final report; and
- (d) notify in writing each of the persons who made those representations, indicating how the Aviation Safety Investigation Board has disposed of that person's representations. 15

(2) A representation is privileged, except if it is a representation made by a Minister responsible for a department having a direct interest in the findings of the Aviation Safety Investigation Board subject to this Act or to a written authorisation from the author of a representation, and no person may knowingly communicate any representation or permit it to be communicated to any other person. 20

(3) The Aviation Safety Investigation Board may use representations it considers necessary in the interests of aviation safety.

(4) If requested to do so by a judicial inquest instituted in terms of the Inquests Act, conducting an inquest into any circumstances in respect of which representations were made to the Aviation Safety Investigation Board, it must make such representations available to such inquest. 25

(5) Except for use for the purpose of an investigation by a judicial inquest in terms of the Inquest Act no person may use any representations made to the Aviation Safety Investigation Board under this section in any criminal, civil, disciplinary or other proceedings. 30

#### **Notification of findings and recommendations**

44. The Aviation Safety Investigation Board must—

- (a) during its investigation of an aircraft accident or aircraft incident, notify forthwith in writing the Minister or any person who in its opinion has a direct interest in its findings and recommendations, whether interim or final, that in its opinion the matter requires urgent action; 35
- (b) on completion of its investigation of an aircraft accident or aircraft incident, notify forthwith in writing any Minister or person who, in its opinion, has a direct interest in its findings as to the causes and contributing factors of the aircraft accident or aircraft incident, any safety deficiencies it has identified and any recommendations resulting from its findings; and 40
- (c) comply with the provisions of Annex 13 to the Convention and furnish the Civil Aviation Authority with such findings as to the causes and contributing factors of the aircraft accident or aircraft incident, and safety deficiencies it has identified and any recommendations resulting from its findings. 45

#### **Minister to respond to Aviation Safety Investigation Board**

45. (1) A Minister of a department who is notified of the findings and recommendations of the Aviation Safety Investigation Board under section 44(a) or (b) must, within 90 days after being so notified—

- (a) advise the Aviation Safety Investigation Board in writing of any action taken or proposed to be taken in response to those findings and recommendations; or 50
- (b) provide written reasons to the Aviation Safety Investigation Board if no action will be taken or if the action to be taken differs from the action that was recommended.

(2) Where the Aviation Safety Investigation Board is satisfied that a Minister is unable to respond to the Aviation Safety Investigation Board within the period referred to in subsection (1) the period may be extended as the Aviation Safety Investigation Board considers necessary.

#### **Aviation Safety Investigation Board may delegate powers** 5

**46.** (1) The Aviation Safety Investigation Board may delegate to any person, subject to any limitations specified in the instrument of delegation, any of the powers conferred or duties imposed on the Aviation Safety Investigation Board under this Act, other than the power—

- (a) of delegation under this subsection; 10
- (b) to make rules; and
- (c) to make recommendations.

(2) A delegation under this section may be revoked in writing at any time by the Aviation Safety Investigation Board.

### **PART 5** 15

#### **ACCESS, USE AND PRIVILEGE OF ON-BOARD RECORDING AND COMMUNICATION RECORD, POWER OF COURT OR INQUEST, ACCESS AND USE OF STATEMENTS USED IN INVESTIGATION, RULES FOR PROTECTION OF IDENTITY AND CERTAIN INFORMATION PRIVILEGED** 20

##### **Definition of “on-board recording”**

**47.** (1) In this Part, “on-board recording” means the whole or any part of—

- (a) a recording of voice communications originating from, or received on or in, the flight deck of an aircraft; or
- (b) a video recording of the activities of the personnel of an aircraft, that is made, using recording equipment that is intended not to be controlled by the personnel, on the flight deck of the aircraft, 25

and includes a transcript or substantial summary of such a recording.

##### **Privilege for on-board recordings**

**48.** (1) Every on-board recording is privileged and, except as provided by this section, no person, including any person to whom access is provided under this section, must— 30

- (a) knowingly communicate an on-board recording or permit it to be communicated to any other person; or
- (b) be required to produce an on-board recording or give evidence relating to it in any legal, disciplinary or other proceedings. 35

##### **Access by Aviation Safety Investigation Board**

**49.** Notwithstanding section 48 any on-board recording that relates to an aircraft accident or aircraft incident being investigated under this Act must be released to an investigator who requests it for the purposes of the investigation.

##### **Use of on-board recording by Aviation Safety Investigation Board** 40

**50.** The Aviation Safety Investigation Board may make such use of any on-board recording obtained under this Act as it considers necessary in the interests of aviation safety but, subject to section 51, must not knowingly communicate or permit to be communicated to anyone any portion thereof that is unrelated to the causes or contributing factors of the aircraft accident or aircraft incident under investigation or to the identification of safety deficiencies. 45

**Access to on-board recording by peace officers, inquests and other investigators**

51. The Aviation Safety Investigation Board must make available any on-board recording obtained under this Act to—

- (a) a coroner who requests access thereto for the purpose of an investigation that the coroner is conducting; or
- (b) any person carrying out a coordinated investigation under section 13.

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**Power of court or inquest**

52. Notwithstanding any item in this section, where, in any proceedings before a court or a judicial inquest in terms of the Inquests Act or a person or persons appointed or designated to conduct a public inquiry into an aircraft accident or aircraft incident pursuant to this Act, a request for the production and discovery of an on-board recording is made, the court or a judicial inquest in terms of the Inquests Act, or a person or persons appointed or designated to conduct a public inquiry into an aircraft accident or aircraft incident pursuant to this Act, must—

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- (a) cause notice of the request to be given to the Aviation Safety Investigation Board, if the Aviation Safety Investigation Board is not a party to the proceedings;
- (b) in camera, examine the on-board recording and give the Aviation Safety Investigation Board a reasonable opportunity to make representations with regard thereto; and
- (c) if the court or a judicial inquest in terms of the Inquests Act concludes in the circumstances of the case that the public interest in the proper administration of justice outweighs the privilege attached to the on-board recording by virtue of this section, order the production and discovery of the on-board recording, subject to such restrictions or conditions as the court or a judicial inquest in terms of the Inquests Act considers appropriate, and may require any person to give evidence that relates to the on-board recording.

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**Use of on-board recording prohibited**

53. An on-board recording may not be used against any of the following persons in disciplinary proceedings, proceedings relating to the capacity or competence of an officer or employee to perform the officer's or employee's functions, or in legal or other proceedings:

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- (a) Air crew members;
- (b) airport vehicle operators;
- (c) flight service station specialists;
- (d) persons who relay messages respecting air traffic control, or related matters.

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**Definition of "communication record"**

54. (1) In this Part, "communication record" means the whole or any part of any record, recording, copy, transcript or substantial summary of any type of communications in respect of air traffic control or related matters that take place between any of the following persons, namely air traffic controllers, aircraft crew members, airport vehicle operators, flight service station specialists and persons who relay messages in respect of air traffic control or related matters.

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(2) A communication record obtained under this Act must not be used against any person referred to in section 57 in any legal or disciplinary proceedings.

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**Statement privileged**

**55.** (1) For the purposes of this Part and section 33(2)(f)—

(a) “**statement**” means—

- (i) the whole or any part of an oral, written or recorded statement relating to an aircraft accident or aircraft incident and given, by the author of the statement, to the Aviation Safety Investigation Board, an investigator or any person acting for the Aviation Safety Investigation Board or for an investigator; 5
- (ii) a transcription or substantial summary of a statement referred to in subparagraph (i); or 10
- (iii) conduct that could reasonably be taken to be intended as such a statement; and

(b) where a statement is privileged, the identity of its author is privileged to the same extent.

(2) A statement is privileged, and no person, including any person to whom access is provided under this section, must knowingly communicate it or permit it to be communicated to any person except as provided by this Act or as authorised in writing by the person who made the statement. 15

**Access by judicial inquest and other investigators**

**56.** The Aviation Safety Investigation Board must make statements available to— 20

- (a) a judicial inquest in terms of the Inquests Act, who requests access thereto for the purpose of an investigation that the coroner is conducting; or
- (b) any person carrying out a coordinated investigation under section 13.

**Power of court or inquest with regard to statements**

**57.** Notwithstanding any item in this section, where, in any proceedings before a court or an inquest or a person or persons appointed or designated to conduct a public inquiry into an aircraft accident or aircraft incident pursuant to this Act, a request for the production and discovery of a statement is contested on the ground that it is privileged, the court or coroner must— 25

- (a) in camera, examine the statement; and 30
- (b) if the court or a judicial inquest concludes in the circumstances of the case that the public interest in the proper administration of justice outweighs the privilege attached to the statement by virtue of this section, order the production and discovery of the statement, subject to such restrictions or conditions as the court or coroner considers appropriate, 35

and may require any person to give evidence that relates to the statement.

**Use of statement prohibited**

**58.** A statement must not be used against the person who made it in any legal, disciplinary or other proceedings except in a prosecution for perjury or for giving contradictory evidence or a prosecution under section 60. 40

**Reporting of aircraft accidents and aircraft incidents**

**59.** (1) The Aviation Safety Investigation Board may, make rules for the establishment and administration of systems for the mandatory or voluntary reporting to the Aviation Safety Investigation Board of aircraft accidents or aircraft incidents, or such classes thereof as are specified in the rules. 45

(2) The Aviation Safety Investigation Board may, subject to this section, make such use of any report made to it pursuant to rules made under subsection (1) as it considers necessary in the interests of aviation safety.

(3) Rules made under subsection (1) may include rules for the protection of the identity of persons who report aircraft accidents or aircraft incidents.

#### **Certain information privileged**

**60.** Where the identity of a person who has made a report to the Aviation Safety Investigation Board pursuant to rules made under section 59 is protected by rules referred to in section 61, information that could reasonably be expected to reveal that identity is privileged, and no person must— 5

- (a) knowingly communicate it or permit it to be communicated to any person; or
- (b) be required to produce it or give evidence relating to it in any legal, disciplinary or other proceedings. 10

#### **Use of report made to Aviation Safety Investigation Board under voluntary reporting system established by rules prohibited**

**61.** A report made to the Aviation Safety Investigation Board under a voluntary reporting system established by rules made under section 59 must not be used against the person who made the report in any legal, disciplinary or other proceedings if the person's identity is protected by rules referred to in section 59. 15

#### **Appearance of investigator**

**62.** Except for proceedings before and investigations by a judicial inquest, an investigator is not competent or compellable to appear as a witness in any proceedings, unless the court or other person or body before whom the proceedings are conducted so orders for special cause. 20

#### **Opinions inadmissible**

**63.** An opinion of a member or an investigator is not admissible in evidence in any legal, disciplinary or other proceedings.

### **PART 6 25**

#### **RULES**

#### **Rules**

- 64.** (1) The Aviation Safety Investigation Board may make rules—
- (a) prescribing the manner in which to exercise or carry out any of its powers, duties and functions under this Act and, generally, for its efficient operation; 30
  - (b) regulating the keeping and preservation of records, documents and other evidence relating to aircraft accidents and aircraft incidents;
  - (c) regulating the attendance of interested persons at tests to destruction conducted under section 35;
  - (d) defining, for the purposes of an investigation, the site or sites of an aircraft accident or aircraft incident and for the protection of those sites; 35
  - (e) for defining the rights or privileges of persons attending investigations as accredited representatives, advisers, experts, and observers or with observer status;
  - (f) regarding the tariff of fees and expenses to be paid to any witness attending at an investigation or at a public inquiry conducted under section 38 and the conditions under which a fee or expenses may be paid to any such witness; 40
  - (g) regarding the procedures and rules to be followed in conducting public inquiries under section 38;

- (h) regarding the tariff of travel and living expenses to be paid to any member or member of staff of the Aviation Safety Investigation Board; and
- (i) generally for carrying out the purposes and provisions of this Act.

(2) A copy of each rule that the Aviation Safety Investigation Board proposes to make under subsection (1) must be published in the *Gazette* at least 90 days before the proposed effective date, and within that 90 days interested persons are given an opportunity to make representations to the Aviation Safety Investigation Board. 5

(3) Subsection (2) does not apply in respect of a proposed rule that—

- (a) has previously been published pursuant to that subsection, whether or not it has been changed as a result of representations made pursuant to that subsection; or 10
- (b) makes no substantive change to an existing rule.

## PART 7

### OFFENCES

#### Offences 15

**65.** (1) Any person who—

- (a) without lawful excuse, wilfully resists or otherwise obstructs a member or an investigator in the execution of powers or duties under this Act;
- (b) knowingly gives false or misleading information at any investigation or public inquiry under this Chapter; or 20
- (c) makes a report pursuant to section 61 that the person knows to be false or misleading,

is guilty of an offence and liable on conviction to a fine or term of imprisonment not exceeding two years.

(2) A person may not refuse or fail to produce information to an investigator, or to attend before an investigator and give a statement, in accordance with section 33(3)(a), or to provide information in accordance with section 33(3)(c) or to make the body of a deceased person or other human remains available for the performance of an autopsy or medical examination in accordance with a requirement imposed under section 33(3)(d) of this Act. 25 30

(3) (a) No person may refuse or fail to submit to a medical examination in accordance with section 33(3)(b), but information obtained pursuant to such an examination is privileged and subject to the power of the Aviation Safety Investigation Board to make use of it as it considers necessary in the interests of aviation safety.

- (b) No person may— 35
  - (i) knowingly communicate it or permit it to be communicated to any person; or
  - (ii) be required to produce it or give evidence relating to it in any legal, disciplinary or other proceedings.

(4) Any person who contravenes subsection (2) or (3) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years. 40

#### Evidence

**66.** (1) Subject to section 65(1)—

- (a) a report purporting to have been signed by an investigator stating that the investigator has exercised any power pursuant to section 33 and stating the results of the exercise of the power; or 45
- (b) a document purporting to have been certified by an investigator as a true copy of or extract from a document produced to the investigator pursuant to section 33,

is admissible in evidence in any prosecution for an offence under this Act without proof of the signature or official character of the person appearing to have signed the report or certified the document and is, in the absence of evidence to the contrary, proof of the statements contained in the report or proof of the contents of the document. 50

(2) No report or document must be received in evidence under this section unless the party intending to produce it has, at least seven days before producing it, served a notice of that intention on the party against whom it is intended to be produced, together with a copy of the report or document.

(3) The party against whom a report or document is produced under this section may require the attendance, for the purposes of cross-examination, of the person who appears to have signed the report or certified the document as a true copy or extract. 5

## PART 8

### TRANSITIONAL ARRANGEMENTS AND LIABILITY OF MEMBERS, STAFF AND ACCREDITED REPRESENTATIVES, EXPERTS AND ADVISERS OF AVIATION SAFETY INVESTIGATION BOARD 10

#### Investigations

67. Any matter that is in the course of being investigated, or that has been investigated by the South African Civil Aviation Authority, but on which a report has not been made by the South African Civil Aviation Authority when this Act comes into force shall, on the coming into force of this Act, be taken up and continued by the Aviation Safety Investigation Board, as if it were, or had been, an investigation under this Act. 15

#### Liability of members, staff and accredited representatives, experts and advisers of Aviation Safety Investigation Board

68. (1) A member of the Aviation Safety Investigation Board, appointed staff, accredited representatives, experts and advisers are not personally liable by virtue of any report, finding made or expressed in good faith or made known in terms of this Act. 20

(2) The internal proceedings and the investigation of aircraft accidents and aircraft incidents of the Aviation Safety Investigation Board are not open to the public.

## CHAPTER 5 25

### COMMISSIONS AND BOARDS OF INQUIRY

#### Commission of Inquiry in terms of Constitution

69. (1) In the event of any aircraft accident or aircraft incident rising out of or in the cause of air navigation and occurring in or over the Republic or territorial waters thereof the President may appoint a commission of enquiry in terms of section 84(2)(f) of the Constitution to conduct an investigation into the accident and report to him or her thereon. 30

(2) Nothing contained in subsection (1) must be construed as affecting the powers of duties conferred or imposed upon judicial officers by the Inquests Act.

#### Boards of inquiry into certain offences 35

70. (1) When an offence has been committed in terms of this Act or if any orders have been issued under section 143 to counter any action contemplated in that section, the Minister may appoint a board of inquiry, which consists of so many persons as the Minister may determine, to inquire into such offence or such action and to report to him or her thereon and make such recommendations as the board may think fit. 40

(2) The board shall determine its own procedure and, where it consists of more than one member, must have a chairperson designated by the Minister.

(3) The board has the power to summon and examine witnesses on oath or affirmation and to call for the production for examination by the board of any books, documents or other matter. 45

(4) The laws and rules governing procuring the attendance of witnesses, their examination, the production of books and documents, and for that purpose the chairperson of the board or, where the board consists of one person only, such person signs such documents as may be necessary for the purpose of the inquiry.

(5) Any process to be served for the purposes of the board must be served by the messenger of the court for the district in which the person upon whom service is to be made resides, or by a member of the South African Police Service. 5

(6) The chairperson of the board or, where the board consists of one person only, such person may direct that the public not to be present at the proceedings, or any part of the proceedings, of the board. 10

(7) If the chairperson of the board or, where the board consists of one person only, such person considers it in the public interest, he or she may direct that any finding or recommendation of the board, or any evidence as presented to the board, must not be made available to any court of law.

## CHAPTER 6 15

### PART 1

#### CIVIL AVIATION AUTHORITY

##### Establishment of Civil Aviation Authority

71. A juristic person to be known as the South African Civil Aviation Authority, comprising of the Civil Aviation Authority Board, the Director and staff of the Civil Aviation Authority, is hereby established. 20

##### Objects of Civil Aviation Authority

72. The objects of the Civil Aviation Authority are to—
- (a) control and regulate civil aviation safety and security;
  - (b) oversee the implementation and compliance with the National Aviation Security Program; 25
  - (c) oversee the functioning and development of the civil aviation industry;
  - (d) promote civil aviation safety and security;
  - (e) develop any regulations that are required in terms of this Act; and
  - (f) monitor and ensure compliance with this Act and the Convention. 30

##### Functions of Civil Aviation Authority

73. (1) The Civil Aviation Authority has the function of conducting the safety and security oversight of civil aviation in the Republic by—
- (a) developing and promoting appropriate, clear and concise regulatory requirements, and technical aviation safety and security standards; 35
  - (b) developing effective enforcement strategies to ensure compliance with aviation safety and security standards;
  - (c) issuing certificates, licences, registrations and permits;
  - (d) conducting comprehensive aviation industry surveillance, including assessment of safety and security related decisions taken by industry management at all levels for their impact on aviation safety and security; 40
  - (e) overseeing and regulating the flight inspection of navigational aids to aviation;
  - (f) conducting regular reviews of the system of civil aviation safety and security in order to— 45
    - (i) monitor the safety performance of the aviation industry;
    - (ii) identify safety and security related trends and risk factors; and
    - (iii) promote the development and improvement of the system;
  - (g) conducting regular and timely assessment of international safety and security developments; 50



- (h) formulating and approving supporting regulations and technical standards through a consultative process with the aviation industry in terms of section 156 of this Act;
- (i) monitoring, implementing and enforcing the National Aviation Security Program (NASP); 5
- (j) the review and ensurance of the adequacy of security programs and associated documentation produced by airports, air service operators and cargo operations, monitoring their implementation to ensure continuing effectiveness and incorporation of amendments as required;
- (k) the enhancement of aviation security by the development and dissemination of progressive administrative and technical practices, promoting their use by security services, airport administrations and air service operators; 10
- (l) the formulating of a national aviation disaster plan;
- (m) encouraging a greater acceptance by the aviation industry of its obligation to maintain high standards of aviation safety and security, through— 15
- (i) comprehensive safety and security education and training programs;
- (ii) accurate and timely aviation safety and security advice; and
- (iii) fostering an awareness in industry management, and within the community generally, of the importance of aviation safety and security and compliance with relevant legislation; and 20
- (n) promoting communication with all interested parties on aviation safety and security issues.
- (2) In addition to the functions referred to in subsection (1) the Civil Aviation Authority has the following functions:
- (a) Advise the Minister on matters associated with any action or condition which— 25
- (i) is capable of causing any actual or potential threat of harm or damage to persons or property;
- (ii) the Minister refers to the Civil Aviation Authority; and
- (iii) the Civil Aviation Authority considers necessary in the furtherance of its objects; 30
- (b) for purposes of this Act, act as the national competent authority in connection with aviation transportation;
- (c) to administer this Act and the Acts mentioned in Schedule 5 and 6;
- (d) to recommend to the Minister the introduction or amendment of civil aviation safety and security legislation; 35
- (e) to make recommendations to the Minister in respect of the conclusion of any international agreement with other States, Governments or international organisations;
- (f) to perform any other functions conferred on it by or under any other law; 40
- (g) to execute an order issued in terms of section 100;
- (h) to implement any mutual agreements and Conventions;
- (i) to perform any other functions as prescribed;
- (j) to promote the development of South Africa's civil aviation safety and security capabilities, skills and services for the benefit of the South African community; 45
- (k) to provide consultancy and management services relating to this Act, both within and outside the Republic;
- (l) to perform any functions incidental to any of the functions specified in this section; 50
- (m) to investigate aircraft accidents and aircraft incidents that the Aviation Safety Investigation Board has determined not to investigate in terms of Chapter 4 and for purposes of regulatory compliance with this Act; and
- (n) to perform its functions in the most cost-efficient and cost-effective manner and in accordance with section 195 of the Constitution in order to achieve the objects as referred to in section 72. 55
- (3) The Civil Aviation Authority may perform its functions outside the Republic when it is necessary in order to achieve the objects under this Act.

(4) The functions of the Civil Aviation Authority as contemplated in subsection (1) and (2) must be performed by the Director and staff appointed by the Director.

#### **Funding of Civil Aviation Authority**

- 74.** (1) The Civil Aviation Authority is funded from—
- (a) civil aviation regulatory charges and fees prescribed in an act of Parliament and cost recovery; 5
  - (b) levies or charges on aircraft passengers and participants in civil aviation as prescribed by national legislation;
  - (c) interest on invested cash balances;
  - (d) loans granted in terms of subsection (2); 10
  - (e) money lawfully accruing from any other source;
  - (f) any other money received in terms of the South African Civil Aviation Authority Levies Act, 1998 (Act No. 41 of 1998) or any other civil aviation legislation, including the income derived from the fees contemplated in this Act; 15
  - (g) levies on the supply of aircraft fuel as prescribed by national legislation; and
  - (h) monies appropriated by Parliament.
- (2) The Civil Aviation Authority may with the approval of the Minister, and in consultation with the Minister of Finance raise money by way of loans.
- (3) The Civil Aviation Authority may with the approval of the Minister, and in consultation with the Minister of Finance establish a structure which must provide that all fines paid to the Civil Aviation Authority in respect of any offence provided for in any legislation administered by the Civil Aviation Authority, be utilised by the Civil Aviation Authority. 20

## **PART 2**

25

### **CIVIL AVIATION AUTHORITY BOARD**

#### **Establishment of Civil Aviation Authority Board**

**75.** There is hereby established a Board to be known as the Civil Aviation Authority Board.

#### **Functions and responsibilities of the Civil Aviation Authority Board** 30

- 76.** (1) The Civil Aviation Authority Board has the following functions:
- (a) To oversee the corporate governance of the Civil Aviation Authority in order to attain the objects of this Act;
  - (b) to provide strategic direction on corporate governance in order to attain the objects referred to in section 72; and 35
  - (c) to monitor service standards and customer satisfaction levels and to report to the Minister on any matter concerning such issues.
- (2) The Civil Aviation Authority Board has the following responsibilities—
- (a) to determine, oversee and revise the corporate governance structures within the Civil Aviation Authority; 40
  - (b) to determine, oversee and revise the human resources policies and human resources strategies of the Civil Aviation Authority;
  - (c) to determine and compile the corporate governance plan in respect of the Civil Aviation Authority;
  - (d) to determine the policy for conditions of employment and remuneration, allowances, subsidies and other service benefits of employees of the Civil Aviation Authority, other than the Director; and 45
  - (e) to compile an annual report on the financial state of affairs of the Civil Aviation Authority as contemplated in section 95.
- (3) As accounting authority, the Civil Aviation Authority Board is responsible for— 50
- (a) all income and expenditure of the Civil Aviation Authority;

- (b) all revenue collected by the Civil Aviation Authority;
- (c) all assets and the discharge of all liabilities of the Civil Aviation Authority; and
- (d) the proper and diligent implementation and adherence to the provisions of the Public Finance Management Act.

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(4) In the execution of the responsibilities as contemplated in subsection (2) and (3) the Civil Aviation Authority Board may not compromise or obstruct the execution of the safety and security oversight functions of the Director as contemplated in this Act.

(5) The Civil Aviation Authority Board may authorise any of its members to act on its behalf in any matter.

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(6) A member of the Civil Aviation Authority Board is not personally liable in respect of anything reflected in any report submitted by the Civil Aviation Authority Board, to Parliament or any Provincial legislature.

### **Appointment of members of Civil Aviation Authority Board**

77. (1) The Civil Aviation Authority Board consists of the Director and seven members appointed by the Minister, of whom— 15

- (a) one must be the non-executive chairperson who is appointed for a term of three years and shall on the expiration of such term be eligible for reappointment for one further term only;
- (b) one must be, if the Minister specifies an office in the department for the purpose of this subsection, the person for the time-being holding that office;
- (c) one must be a person with suitable expertise in human resources management;
- (d) two persons representative of the civil aviation industry with suitable—
  - (i) financial expertise; and
  - (ii) operational expertise;
- (e) one person must be a legally qualified person with expertise in aviation law; and
- (f) one must be a person with civil aviation acknowledged technical competencies involved in organised labour from the aviation industry.

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(2) (a) The members of the Civil Aviation Authority Board contemplated in subsection (1)(a) to (f) are part-time members of the Civil Aviation Authority Board and hold office for a period not exceeding three years, on the conditions determined by the Minister upon appointment of such member. 30

(b) An appointed member of the Civil Aviation Authority Board may be re-appointed for a further period not exceeding three years, in which case the procedure contemplated in subsection (3)(a) does not apply. 35

(c) Notwithstanding subparagraph (b) the Minister may extend the term of office of any appointed member by a further period of not more than six months in order to finalise the appointment of a new Civil Aviation Authority Board.

(3) The members contemplated in subsection (1)(a) and (1)(c) to (f) may be appointed only after— 40

- (a) the Minister has by notice in the *Gazette* and the media invited interested parties to nominate persons suitable for appointment;
- (b) the Minister is satisfied that the person has suitable experience or possesses the qualifications as referred to in subsection (1)(c), to (e); and
- (c) The Minister has compiled a list of not more than ten members eligible for appointment to the Civil Aviation Authority Board and publish such list in the *Gazette* for public comment for a period of not less than 30 days, and notified Parliament accordingly.

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(4) After receipt of the comments referred to in subsection (3)(c), the Minister must appoint the members of the Civil Aviation Authority Board and notify Parliament of such appointment within 30 days. 50

(5) The members of the Civil Aviation Authority Board referred to in subsection (1), with the exception of the Director and member referred to in subsection (1)(b), must not

be in the full-time service of any organ of state or public entity as referred to in Schedule 2 and 3 of the Public Finance Management Act.

(6) Members of the Civil Aviation Authority Board must be South African citizens.

(7) In the exercise of the functions and performance of the responsibilities referred to in this Act the Civil Aviation Authority Board is accountable solely and directly to the Minister. 5

### Meetings of Civil Aviation Authority Board

78. (1) The meetings of the Civil Aviation Authority Board must be held at a time and place to be determined by the Chairperson and all subsequent meetings must, subject to the provisions of subsection (2), be held at such times and places as the Civil Aviation Authority Board or the Chairperson of the Civil Aviation Authority Board, if authorised thereto by it, may determine. 10

(2) The Chairperson may at any time call a special meeting of the Civil Aviation Authority Board, and must call such meeting within 14 days after receipt of a written request signed by not less than three members of the Civil Aviation Authority Board desiring such a meeting to be called. 15

(3) Five members of the Civil Aviation Authority Board form a quorum for a meeting.

(4) The Chairperson presides at all meetings of the Civil Aviation Authority Board at which he or she is present, and if the Chairperson is absent from any meeting the members present must elect one of their number to preside at such meeting. 20

(5) The decision of a majority of the members at the meeting of the Civil Aviation Authority Board present at any meeting is considered to be a decision of the Civil Aviation Authority Board and in the event of an equality of votes on any matter the person presiding at such meeting has a casting vote in addition to his or her deliberative vote. 25

### Minutes of Civil Aviation Authority Board meetings

79. (1) The Civil Aviation Authority Board must keep minutes of its meetings and submit copies of the minutes to its members and the Minister within one month of approval of the minutes.

(2) Such minutes, when signed at a next meeting by a person who chairs that meeting, are, in the absence of proof of error therein, regarded as a true and correct record of the proceedings and are on the face of it evidence of those proceedings before a court of law, any tribunal or a commission of inquiry. 30

### Removal of member of Civil Aviation Authority Board from office

80. (1) An appointed member of the Civil Aviation Authority Board vacates his or her office immediately if he or she— 35

(a) is convicted—

(i) whether in the Republic or elsewhere, of murder, robbery, theft, fraud, forgery or uttering a forged document, perjury or any offence involving dishonesty; or 40

(ii) of any offence in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), the Companies Act, 1973 (Act No. 61 of 1973), the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), the Public Finance Management Act or of contravening this Act; 45

(b) without authorisation discloses or improperly acts on information gained as a result of his or her membership of the Civil Aviation Authority Board;

(c) is or becomes an unrehabilitated insolvent or commits an act of insolvency;

(d) is or has at any time been removed from an office of trust or any statutory or non-statutory Board on account of misconduct; 50

- (e) becomes a political office bearer; or  
 (f) is relieved of his or her office under subsection (2).
- (2) The Minister must immediately relieve any appointed member of the Civil Aviation Authority Board if that member has—
- (a) failed to immediately vacate his or her office in terms of subsection (1); 5
  - (b) failed to disclose any conflict of interest as referred to in section 84;
  - (c) failed to attend three consecutive meetings of the Civil Aviation Authority Board without prior leave of the Civil Aviation Authority Board;
  - (d) been unable to perform his or her functions of office effectively due to continued serious ill-health; 10
  - (e) been convicted of an offence during his or her term of office and sentenced to a period of imprisonment without the option of a fine; or
  - (f) become of unsound mind.
- (3) The Minister may relieve the appointed members of the Civil Aviation Authority Board of their office if— 15
- (a) the appointed member or members have failed to substantially comply with the performance agreement entered into in terms of section 94;
  - (b) (i) the Minister has in writing individually notified every appointed member of the Civil Aviation Authority Board of such failure and the nature of such failure; 20
  - (ii) the Minister has afforded the Civil Aviation Authority Board a reasonable opportunity to make a written submission to him or her in respect of the notification contemplated in subparagraph (i);
  - (iii) after consideration of the submission contemplated in subparagraph (ii) 25 and if such submission does not satisfactorily address the failure specified in the Minister's notification contemplated in subparagraph (i), the Minister has afforded the Civil Aviation Authority Board a reasonable opportunity to rectify that failure; and
  - (iv) all appointed members of the Civil Aviation Authority Board are relieved 30 of their office on the same date and on the same conditions; and
  - (c) the Minister has within 14 days of issuing the notification contemplated in paragraph (b)(i) and tabled thereof a copy in Parliament, or, if Parliament is not then in session, has published a copy of that notification in the *Gazette*.
- (4) If an appointed member dies, is relieved of his or her office or vacates his or her 35 office before the expiry of the period for which he or she was appointed, the Minister may appoint another person to fill the vacancy for the remaining portion of the period for which that member was appointed, but the procedure contemplated in section 77(3)(a) to (c) does not apply in respect of an appointment in terms of this subsection.
- (5) If all members of the Civil Aviation Authority Board simultaneously vacate their 40 office in terms of subsection (1) or are simultaneously relieved in terms of subsection (2) or (3) by the Minister the procedure contemplated in subsection (3) of section 77 will apply in respect of the appointment of a Civil Aviation Authority Board.

### Committees of Civil Aviation Authority Board

81. The Civil Aviation Authority Board may— 45
- (a) appoint one or more committees consisting of one or more of its members and such other persons as it considers appropriate, to advise it on the exercise and performance of the Civil Aviation Authority Board's functions and responsibilities; 50
  - (b) delegate or assign to any committee such of its functions and responsibilities as it considers necessary;
  - (c) designate a chairperson and, if it deems it necessary, a deputy chairperson for every committee; and
  - (d) require a report to be submitted by a committee on completion of the duties and functions assigned to it under paragraph (b). 55

**Remuneration of members of Civil Aviation Authority Board**

**82.** (1) Subject to subsection (2), an appointed member receives from the Civil Aviation Authority such remuneration and allowances as may be determined by the Minister in consultation with the Minister of Finance.

(2) An appointed member who is in the full-time service of the State is not, in respect of the duties performed by him or her as a member, paid any— 5

(a) remuneration in addition to his or her remuneration; and

(b) allowance in respect of subsistence and travel at a rate higher than that applicable to him or her as such officer.

**Corporate governance plan**

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**83.** (1) The Civil Aviation Authority Board must annually submit to the Minister a corporate governance plan in respect of the ensuing financial year and each of the three immediately following financial years, containing the information, taking into account the terms of the performance agreement contemplated in section 94 as the Minister or the Minister of Finance may require. 15

(2) The structure of the corporate governance plan, the procedure for approval by the Minister and consultation requirements in respect of that plan must be contained in the performance agreement contemplated in section 94.

**Conflict of interest**

**84.** (1) A member of the Civil Aviation Authority Board may not be present during, or take part in, the discussion of, or the taking of a decision on, any matter before the Civil Aviation Authority Board in which that member or his or her spouse, life partner, child, business partner or associate or employer, other than the State, has a direct or indirect financial interest. 20

(2) Upon appointment of a person as a member of the Civil Aviation Authority Board, that person must submit to the Minister and the Civil Aviation Authority Board a written statement in which he or she declares whether or not he or she has any interest contemplated in subsection (1). 25

(3) If any of the Civil Aviation Authority Board member acquires or contemplates acquiring an interest which could possibly be an interest contemplated in subsection (1), he or she must immediately in writing declare that fact to the Minister and the Civil Aviation Authority Board. 30

(4) If an organisation or enterprise in which the Civil Aviation Authority Board member has an interest contemplated in section (1) is requested to offer its services, the Civil Aviation Authority Board member must immediately, in writing, declare his or her interest to the Minister and the Civil Aviation Authority Board. 35

**PART 3****DIRECTOR OF CIVIL AVIATION AUTHORITY****Appointment and removal of Director**

**85.** (1) The Director may be appointed only after— 40

(a) the Minister has by notice in the *Gazette* and the media invited interested parties to apply, or be nominated for appointment;

(b) the Minister has compiled a shortlist of suitable persons nominated or who have applied, in terms of subparagraph (a), who are eligible to be appointed as Director, and published such list in the *Gazette* for public comment for a period of not less than 30 days. 45

(2) After receipt of the comments referred to in subsection (1)(b), and the evaluation of the persons referred to in that subsection, the Minister must appoint the Director and notify Parliament within 30 days of such appointment.

(3) When appointing the Director in terms of subsection (1) the Minister must take into account the following factors: 50

- (a) Such person's management and aviation technical knowledge and experience; and
- (b) such person's suitability and competence for the efficient discharge of the Director's powers and duties under this Act.
- (4) The Director holds his or her office for a period not exceeding five years. 5
- (5) The Director is appointed on such conditions as may be agreed upon by the Minister and the Director, including conditions providing for remuneration and allowances as the Minister determines after consultation with the Minister of Finance and the Civil Aviation Authority Board.
- (6) The Director may be reappointed at the expiry of his or her term of office. 10
- (7) The Director holds office on a full-time basis.
- (8) The Director must be a South African citizen who is a fit and proper person to hold such office and must obtain a top secret security clearance.
- (9) The Director may not engage in any other paid employment and may not participate in any activity in respect of which he or she is in any way remunerated or receives any benefits or allowances without prior written approval of the Minister. 15
- (10) The Minister may, at any time, discharge the Director from office—
- (a) if he or she repeatedly fails to perform the duties of office efficiently;
- (b) if he or she materially fails to comply with the conditions of the performance agreement entered into as contemplated in section 94; 20
- (c) if he or she, due to any physical illness, mental illness or any other cause becomes incapable of performing the functions of the office of Director or performs them inefficiently; or
- (d) for misconduct.
- (11) The Director vacates his or her office immediately if he or she— 25
- (a) is convicted—
- (i) whether in the Republic or elsewhere of murder, robbery, theft, fraud, forgery or uttering a forged document, perjury or any offence involving dishonesty; or
- (ii) of any offence in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), the Companies Act, 1973 (Act No. 61 of 1973), Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), the Public Finance Management Act or of contravening this Act; 30
- (b) is convicted of an offence during his or her term of office and sentenced to a period of imprisonment without the option of a fine; or 35
- (c) becomes a political office bearer.

### Duties of Director

- 86.** (1) The Director is the head of the Civil Aviation Authority's administration and manages the Civil Aviation Authority. 40
- (2) The Director has the powers and must perform the duties conferred or imposed upon him or her by this Act and such powers and duties that may be assigned to him or her by the Minister.
- (3) In the exercise of the powers and performance of duties referred to in this Act, the Director is accountable— 45
- (a) solely and directly to the Minister in respect of issues relating to civil aviation safety and security oversight; and
- (b) to the Civil Aviation Authority Board in respect of the implementation of governance policies as directed by the Civil Aviation Authority Board.
- (4) The Director must submit a quarterly report to the Board on the execution of the functions of the Civil Aviation Authority by the Director. 50

### Responsibilities of Director

- 87.** (1) Subject to this Act the Director—
- (a) is responsible for the carrying out of the functions as contemplated in section 73; 55
- (b) may take any decision in the exercise by the Civil Aviation Authority of its powers;

- (c) performs any function and exercises any power assigned to the Director in terms of the agreement referred to in section 94;
- (d) is responsible for the submission to the Civil Aviation Authority Board of an annual report concerning the activities of the Civil Aviation Authority; and
- (e) is responsible to exercise all powers granted to and duties imposed on the Director in terms of this Act. 5

(2) The Director, subject to the directions of the Civil Aviation Authority Board, is responsible for—

- (a) the appointment of staff of the Civil Aviation Authority; 10
- (b) the organisation and control of the staff;
- (c) the formation and development of an efficient administration;
- (d) the establishment and maintenance of a register of inspectors, authorised officers and authorised persons;
- (e) the maintenance of discipline; and
- (f) the effective deployment and utilisation of staff to achieve maximum operational results. 15

(3) The Director is responsible for the submission to the Civil Aviation Authority Board at least six months before the start of the financial year or another period agreed to between the Civil Aviation Authority Board and the Civil Aviation Authority, a budget of estimated revenue and expenditure for that financial year. 20

### **Powers of Director**

**88.** (1) The Director may designate one or more—

- (a) persons in the service of the Civil Aviation Authority as inspectors or authorised officers; and
- (b) persons who are not in the service of the Civil Aviation Authority as authorised persons. 25

(2) The Director must sign and issue to each authorised officer, inspector and authorised person appointed by him or her, a document which must state the full name and contain a photograph of such authorised officer, inspector or authorised person and contain a statement indicating that— 30

- (a) such authorised officer, inspector or authorised person has been designated in terms of subsection (1); and
- (b) such authorised officer, inspector or authorised person is empowered to exercise the powers entrusted to him or her in terms of this Act.

(3) The Director may limit the powers of authorised officers, inspectors or authorised persons when designating such authorised officer, inspector or authorised person in terms of subsection (1)(a). 35

(4) The qualifications and requirements for persons designated in terms of subsection (1) must be as prescribed.

(5) The Director may on behalf of the Civil Aviation Authority, in the prescribed manner issue any licence, permit, certificate, registration or authorisation required in terms of this Act. 40

### **Assignment and delegation by Director**

**89.** (1) The Director may—

- (a) assign in writing management or other duties to employees with appropriate skills to assist the Director in the management and the control over the functioning of the Civil Aviation Authority; 45
- (b) delegate in writing any of the Director's powers in terms of this Act to an employee of the Civil Aviation Authority or any authorised person; or
- (c) instruct in writing an employee of the Civil Aviation Authority to perform any of the Director's duties in terms of this Act. 50

(2) An assignment, delegation or instruction under subsection (1)—



- (a) may be issued subject to any conditions the Director may impose; and
- (b) does not divest the Director of the power to exercise the powers and perform the duties personally.

#### **Appointment of acting Director**

- 90.** (1) When the Director is absent from the Republic or otherwise unable to fulfil the duties of the Director, he or she must, having regard to section 85(3)(a) and (b) appoint a member of the staff of the Civil Aviation Authority to act as Director. 5
- (2) The period of appointment of an acting Director in subsection (1) may not exceed 30 days.
- (3) The Minister must appoint an acting Director— 10
- (a) during a vacancy in the office of Director;
  - (b) during any period of absence exceeding 30 days in terms of subsection (1), or
  - (c) for any other reason when the Director is unable to perform the functions of the office of Director.
- (4) A person appointed in subsection (3) must not continue to act for more than 12 months. 15
- (5) A person appointed as acting Director as contemplated in subsection (1) and (3) has the responsibilities, powers and functions of the Director.
- (6) A person appointed as acting Director as contemplated in subsection (3) for a period longer than 30 consecutive days must be paid such remuneration and allowances as the Minister determines. 20

#### **Consultation**

- 91.** The Director must in the performance of his or her functions and responsibilities endeavour to consult with relevant persons, bodies and organisations engaged in civil aviation to attain the objects contemplated in section 72. 25

#### **Performance**

- 92.** During the term of office of the Director, he or she must not carry on any activity inconsistent with the performance of the Director's duties and obligations under this Act.

#### **Conflict of interest** 30

- 93.** The Director or his or her spouse, immediate family member, life partner or business associate, may not hold any direct or indirect financial interest in any civil aviation activity or the civil aviation industry without prior written approval of the Minister.

### **PART 4** 35

#### **GENERAL PROVISIONS REGARDING CIVIL AVIATION AUTHORITY**

#### **Performance agreement between Minister, Civil Aviation Authority Board and Director**

- 94.** (1) The Minister, the Civil Aviation Authority Board and the Director must in consultation enter into an agreement or agreements about the performance of the Civil Aviation Authority's functions in terms of this Act. 40
- (2) The agreements contemplated in subsection (1) must be in writing and relate to—
- (a) the Minister's requirements in respect of the Civil Aviation Authority Board and the Civil Aviation Authority's scope of business, efficiency and financial performance, and achievement of objectives; 45

- (b) the principles to be followed by the Civil Aviation Authority Board and the Civil Aviation Authority for the purposes of business planning;
- (c) such measures as may be necessary to protect the financial soundness of the Civil Aviation Authority;
- (d) the principles to be followed at the end of a financial year in respect of any surplus in the accounts of the Civil Aviation Authority; and
- (e) any other matter relating to the performance of the Civil Aviation Authority's functions under this Act.

(3) The Minister, the Civil Aviation Authority Board and the Director may in writing amend the performance agreement from time to time. 10

(4) The Minister must publish the performance agreement in the *Gazette* and any amendment thereto must be so published at least 30 days prior to that amendment coming into operation.

(5) A copy of the performance agreement must be open to inspection by the public at the head office of the Civil Aviation Authority during business hours. 15

(6) The Minister, the Civil Aviation Authority Board and the Director must, before the finalisation of the performance agreement or amendment thereof, on any matter which may affect any stakeholder, consult with the relevant stakeholder or stakeholders in the aviation industry.

#### **Application of Public Finance Management Act** 20

**95.** (1) The Public Finance Management Act applies to the Civil Aviation Authority Board.

(2) The Civil Aviation Authority Board must compile and submit an annual report and financial statements in respect of the Civil Aviation Authority in compliance with section 55 of the Public Finance Management Act. 25

#### **Appointment and remuneration of staff of Civil Aviation Authority**

**96.** (1) Subject to section 76(2), the Director may appoint such employees as are necessary to enable the Civil Aviation Authority to properly carry out its functions.

(2) Subject to section 76(2)(d), the Civil Aviation Authority pays its employees out of its funds such remuneration, allowances, subsidies and other benefits as directed by the Civil Aviation Authority Board's remuneration policy. 30

#### **Restriction on use of name**

**97.** (1) No person may under a name containing the words 'South African Civil Aviation Authority', 'Civil Aviation Authority' or the acronym 'SACAA' or 'CAA' or the translation thereof in any other official language— 35

(a) conduct his, her or its affairs or business or carry on his, her or its occupation or trade;

(b) be registered or licensed under any law; or

(c) falsely claim to be acting on behalf of the Civil Aviation Authority.

(2) Any person who contravenes a provision of subsection (1) is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding six months or to both such fine and imprisonment. 40

#### **Conflict of interest**

**98.** (1) Any person appointed to perform any function in terms of this Act or the regulations must upon such appointment and thereafter, in writing, annually or as and when such conflict may occur, disclose to the Director details of all employment, positions, offices, allegiances, interests or any activities, which may compromise his or her independence in carrying out his or her duties and functions in terms of this Act. 45

(2) Should any interest referred to in subsection (1) which, may compromise his or her independence in carrying out his or her duties and functions in terms of this Act, vest in 50

a person referred to in that subsection, by way of gift, will, succession or otherwise, such interest must be absolutely disposed of within three months of such vesting.

(3) If any person referred to in subsection (1) discloses an interest contemplated in subsection (1), the Director may take such steps as he or she considers necessary to ensure a fair, unbiased and proper exercise of the functions of such person in terms of this Act. 5

(4) If any person referred to in subsection (1) fails to disclose an interest contemplated in subsection (1), the Director must take disciplinary steps against such person.

(5) A person referred to in subsection (1) or his or her spouse, immediate family member, life partner or business associate, may not hold any direct or indirect financial interest in any civil aviation activity or the civil aviation industry without the prior written approval of the Director. 10

(6) A person referred to in subsection (1) may not, directly or indirectly as owner, shareholder, director, officer, partner or otherwise—

(a) be engaged in an aviation undertaking or business; or 15

(b) have an interest in an aviation undertaking or business or an interest in the manufacture or distribution of aviation plant or equipment, except where the distribution is merely incidental to the general merchandising of goods.

(7) A person may not be assigned and a person may not accept an assignment where there exists reason to believe such function could constitute a conflict of interest unless— 20

(a) full disclosure of the circumstances of the possible conflict are made in writing to the Director, and

(b) the assignment has been approved by the Director and carried out in accordance with such conditions as may be specified by the Director. 25

(8) The approval granted in subsection (5) is open to inspection by the public at the head office of the Civil Aviation Authority during business hours.

#### **Limitation of liability**

99. No employee of the Civil Aviation Authority is liable in respect of anything done or omitted in good faith in the exercise of a power or the performance of a duty in terms of or by virtue of this Act, or in respect of anything that may result therefrom. 30

#### **Ministerial order**

100. (1) The Minister may after consultation with the Civil Aviation Authority in writing issue an order in respect of aviation matters requiring the Civil Aviation Authority to do or not to do what is mentioned in the order, if the Minister considers it necessary so to order— 35

(a) in the interests of aviation safety and security; or

(b) to discharge or facilitate the discharge of an international obligation of the State.

(2) Any order issued in terms of subsection (1) must not be inconsistent with the provisions of the Constitution or any other law administered by the Civil Aviation Authority. 40

(3) The Civil Aviation Authority must take all the necessary steps to give effect to an order issued under subsection (1).

(4) The Minister must cause a copy of every order issued in terms of subsection (1) to be tabled in Parliament within 14 days of issuing of that order, or if Parliament is not then in session, within 14 days after the commencement of its next ensuing session. 45

(5) A copy of any order issued in terms of subsection (1) must be open to inspection by the public at the head office of the Civil Aviation Authority during business hours.

**Judicial management and liquidation of Civil Aviation Authority**

101. Despite the provisions of any other law, the Civil Aviation Authority may not be placed under judicial management or in liquidation except if authorised by an Act of Parliament adopted especially for that purpose.

**PART 5**

5

**AVIATION SECURITY****National civil aviation security policy**

102. Subject to this Act the Department is responsible for development of national civil aviation security policies of the State.

**National civil aviation security responsibilities of Department**

10

103. Subject to this Act, the Department is responsible for—

- (a) the compilation, revision and development of the National Aviation Security Program (NASP) in compliance with Annex 17 to the Convention;
- (b) the establishment, production, promulgation and review of the NASP to ensure it continues to meet the State's obligations and is consistent with Government policy; 15
- (c) the defining and allocating of tasks within government policy for implementation of the national aviation security program as between agencies;
- (d) the establishment and promulgation of technical criteria to be met by those responsible for implementing security measures under the national aviation security program; 20
- (e) the constant analysis of the level of threat to civil aviation and initiate such action by airlines, airports, providers of security services and other organisations contributing to the program, sufficient to effectively counter the perceived level of threat; 25
- (f) the policy to ensure that surveys, inspections, audits, tests and investigations of security standards and security measures as well as operating procedures of airports, airlines and providers of security services for purposes of the compilation of the NASP are conducted;
- (g) the receipt, collation, analysis and dissemination of information on any threat or incident and information on the numbers and types of prohibited articles discovered or confiscated and provide a technical reference and information centre for the use of the Civil Aviation Authority, airport administrations, operators and security services; 30
- (h) the fostering and promotion for good working relationships, cooperation and the exchange of relevant information and experience among States, particularly with adjacent States and those with which a State has major air transport relationships; 35
- (i) the ensurance that the State's NASP is current, effective and upgraded from time to time as required by changing circumstances; 40
- (j) the policy in respect of the development, promotion, production and dissemination of suitable training materials that can be used in the training of persons concerned with the implementation of the NASP;
- (k) the development of national standards relating to the specifications of security equipment, systems and airport design; 45
- (l) the coordination of security measures and procedures with appropriate organisations, agencies and relevant departments.
- (m) the development of effective strategies to secure compliance with aviation security standards;
- (n) the assessment of security related decisions taken by industry at all levels for the impact on aviation security; and 50
- (o) the conducting of regular and timely assessment of international security developments.

### National Aviation Security Committee

**104.** (1) The Minister must institute a National Aviation Security Committee composed of—

- (a) the Director-General of the Department who shall also be the chairperson of the Committee, and in whose absence a member of the National Aviation Security Committee, appointed by the National Aviation Security Committee, is to act as chairperson; 5
- (b) an official responsible for national air transport facilitation designated by the Minister;
- (c) an official designated by the Director-General; 10
- (d) the Director or an official designated by the Director;
- (e) an employee of the Airports Company Limited, as defined in section 1 of the Airports Company Act, 1993 (Act No. 44 of 1993), designated by the Airports Company Limited company;
- (f) an officer designated by the Chief of the South African National Defence Force; 15
- (g) a person designated by the Director after consultation with the Minister;
- (h) an official designated by the Director-General: National Intelligence Agency;
- (i) an official responsible for disaster management designated by the Director-General: Provincial and Local Government; 20
- (j) an official designated by the Director-General: South African Secret Service;
- (k) a member designated by the National Commissioner of the South African Police Service;
- (l) an employee of the Air Traffic and Navigation Services Company Limited, as defined in section 1 of the Air Traffic and Navigation Services Company Act, 1993, (Act No. 45 of 1993), designated by the Air Traffic and Navigation Services Company Limited; 25
- (m) an official designated by the Coordinator of the National Intelligence Coordination Committee;
- (n) an official designated by the Director-General: Foreign Affairs; 30
- (o) an official responsible for immigration designated by the Director-General: Home Affairs;
- (p) an official responsible for customs designated by the Commissioner: South African Revenue Services; and
- (q) any other person designated by the Director-General from time to time. 35

(2) A member of the National Aviation Security Committee must have a top secret security clearance.

(3) Every person designated in pursuance of subsection (1), as member of the National Aviation Security Committee, must be authorised to bind his or her employer in decisions taken to advise the Minister in the exercising of the National Aviation Security Committee's functions. 40

(4) In the process of the establishment and development of the policies as contemplated in section 103 National Aviation Security Committee must, where any matter which may affect any stakeholder, consult with the relevant stakeholder or stakeholders in the aviation industry. 45

### Objects of National Aviation Security Committee

**105.** The objects of the National Aviation Security Committee are to—

- (a) advise the Minister with regard to aviation security policy;
- (b) review and make recommendations of the effectiveness of security measures and procedures; and 50
- (c) provide for coordination to ensure the proper and diligent implementation of the national aviation security program.

### Meetings of National Aviation Security Committee

**106.** (1) The National Aviation Security Committee must meet as often as the Chairperson deems expedient, but not less than four times annually.

(2) The National Aviation Security Committee must determine its own procedure for meetings. 5

(3) The National Aviation Security Committee may invite any person or persons to a meeting or meetings of the National Aviation Security Committee who is an authority with regard to any specific matter.

### Security program information confidential

**107.** All information concerning any program, personnel, equipment, system, agreement or special procedure regarding any matter concerning any security plan shall be confidential and shall not be made known except officially by a person empowered to do so to a person empowered to receive such information. 10

### Designation of staff of National Aviation Security Committee by Director

**108.** The Director shall designate personnel in the Civil Aviation Authority to assist the National Aviation Security Committee in its work. 15

### Aviation security program submitted to Minister for approval

**109.** An aviation security program which is drawn up in terms of this Part or the regulations shall be submitted to the Minister for approval and shall, by virtue of such approval, be binding— 20

(a) on any official in the service of the State, any designated airport security officer and air service security officer and any other person involved in the application of such security program in an official capacity; and

(b) on any other person, including a member of the public, where the contents of such program have been brought to the notice of such person in a manner determined by the Director-General. 25

### Determinations by Minister

**110.** (1) The Minister must, in consultation with the Civil Aviation Authority and with the concurrence of the person in charge of a designated airport, approve the appointment of the person responsible for the execution of the security program of such designated airport. 30

(2) Any person appointed in terms of subsection (1) or employed in an executive capacity charged with any aviation security responsibilities at a designated airport must be a South African citizen as defined in section 2 of the South African Citizenship Act, 1995 (Act No. 88 of 1995). 35

### Aviation participants required to have national aviation security program

**111.** (1) The following aviation participants are required to have a national aviation security program—

(a) the operator of a designated airport;

(b) the Air Traffic and Navigation Services Company Limited contemplated in section 2 of Air Traffic And Navigation Services Company Act, 1993 (Act No. 45 of 1993); 40

(c) any air carrier; and

(d) any other aviation participant designated by the Minister from time to time in the *Gazette*. 45

(2) Any aviation participant who fails to comply with subsection (1) or fails to comply with the national aviation security program instituted in terms of subsection (1) is guilty

of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding ten years or to both such fine or imprisonment.

### Offences

- 112.** Any person who—
- (a) contravenes any provision of this Part except section 111; or 5
  - (b) contravenes or fails to comply with any provision of a safety plan approved by the Minister and whereof the contents have been brought to his or her notice, is guilty of an offence and shall be liable on conviction to a fine not exceeding R50 000 or imprisonment not exceeding 10 years or to both such fine and imprisonment.

## CHAPTER 7

10

### MONITORING AND ENFORCEMENT OF REGULATORY COMPLIANCE BY CIVIL AVIATION AUTHORITY AND ISSUING OF COMPLIANCE NOTICES

#### Monitoring of regulatory compliance

**113.** (1) In order to monitor and enforce compliance with this Act and, subject to the conditions of his or her appointment, a person referred to in section 88(1) may at any reasonable time and without prior notice without a warrant— 15

- (a) enter into any aircraft, place or premises;
- (b) inspect such aircraft, place or premises;
- (c) examine any object, make copies of extracts from any book or document found on such aircraft, place or premises that the person referred to in section 88(1) believes on reasonable grounds contains any information relevant to the administration of, and in compliance with this Act; 20
- (d) require any person to furnish the person referred to in section 88(1) with such information or documents, returns or other particulars as may be necessary for the proper administration of this Act; 25
- (e) while on the premises, or at any time thereafter, question any person who is or was on the premises, either alone or in the presence of any other person on any matter to which this Act relates;
- (f) order any person who has control over or custody of any book, document or thing on or in those premises to produce to him forthwith, or at such time and place as may be determined by him, such book, document or thing; or 30
- (g) at any time and place order any person who has the possession or custody of or is in the control of a book, document or thing relating to the business of an employer, to produce forthwith or at such time and place as may be determined by him, such book, document or thing. 35

(2) A person executing the inspection as contemplated in subsection (1) must show his or her authorisation to any person requesting it and may be accompanied by an interpreter and any other person reasonably required to assist him or her in conducting the inspection.

(3) No information obtained during the inspection contemplated in subsection (1) which is of a confidential, personal, commercially sensitive or proprietary nature may be made public or otherwise disclosed to any person without the permission of the person to whom that information relates or used for purposes of prosecution. 40

(4) For purposes of monitoring regulatory compliance with any legislation administered by the Civil Aviation Authority, a person conducting an inspection as contemplated in subsection (1), may only enter into a private dwelling, with the consent of the occupier or under the authority of a warrant issued in terms of subsection 5(a) or without a warrant in terms of subsection 5(b). 45

(5)(a) For purposes of gathering evidence with the view to prosecute any person for a contravention of any legislation administered by the Civil Aviation Authority a person referred to in section 88(1) must not exercise any power to— 50

- (i) enter any aircraft or premises;
- (ii) search any aircraft or premises;

- (iii) examine any object;
- (iv) make copies of or take extracts from any book or document; or
- (v) seize anything,

unless such person has obtained a warrant permitting any such action from the court that has jurisdiction in the area where the aircraft or premises are situated, and such warrant must only be issued if it appears from information on oath that there are reasonable grounds for believing that an article or thing is upon or in such aircraft or premises, and should specify which of the acts mentioned in this subsection may be performed by the person to whom it is issued. 5

(b) The proviso to paragraph (a) does not apply where the person concerned believe on reasonable grounds that any object, book or document which is the subject of the search may be destroyed, tampered with or disposed of if the provisions of the said proviso are first complied with. 10

(6) A warrant contemplated in subsection (5)(a) must only be issued if it appears to the court from information on oath that there are reasonable grounds for believing that an exercise of a power referred to in that subsection is necessary for the purpose of appropriate and applicable law enforcement. 15

(7) The warrant contemplated in subsection (5)(a) must specify the parameters within which the person executing such warrant may perform an entry, search or seizure. 20

(8) A warrant may be issued on any day and shall be in force until— 20

- (a) it has been executed;
- (b) it is cancelled by the person who issued it, or, if such person is not available, by any person with similar authority; or
- (c) the expiry of one month from the date of its issue.

(9) Any person who acts on the authority of a warrant may use such force as may be reasonably necessary to overcome any resistance against the entry and search, including the breaking of any door or window, but such person must first audibly demand admission and state the purpose for which he or she seeks entry. 25

(10) Any person executing a warrant in terms of this section must immediately before commencing with the execution— 30

- (a) identify himself or herself to the owner or person in control of the premises, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix such copy in a prominent place on the premises;
- (b) supply such person at his or her request with particulars regarding his or her authority to execute such warrant; and 35
- (c) must conduct the entry and inspection with strict regard for decency and order, and with regard to each person's right to dignity, freedom and privacy.

(11) The proviso to paragraph (5)(a) shall not apply where the person concerned believes on reasonable grounds that any object, book or document which is the subject of the search may be destroyed, tampered with or disposed of if the provisions of the said proviso are first complied with. 40

(12) A warrant issued in terms of this section must be executed by day unless the person who issued it authorises that it may be executed at night, during hours which are reasonable in the circumstances. 45

(13) Any person executing a warrant in terms of this section who removes anything from premises being searched, must—

- (a) issue a receipt for it to the owner or person in control of the premises; and
- (b) return it as soon as practicable after it has served the purpose for which it was removed. 50

(14) Any person executing a warrant in terms of this section may be accompanied and assisted by a police officer and interpreter.

#### Compliance notices

114. (1) Any person conducting an inspection as contemplated in section 113(1), may issue a compliance notice in the prescribed manner to the person in charge of the 55



premises or to the person determined to be responsible to take appropriate corrective action in order to remove or rectify such condition if any provision of this Act has not been complied with.

(2) A compliance notice remains in force until the relevant provision of the Act has been complied with and the person conducting an inspection as contemplated in subsection 113(1), has issued a compliance certificate as prescribed in respect of that notice. 5

(3) A compliance notice issued in terms of subsection (1) must set out—

- (a) details of the conduct constituting non-compliance;
- (b) any steps the person must take and the period within which those steps must be taken; 10
- (c) anything which the person may not do, and the period during which the person may not do; and
- (d) the procedure to be followed in lodging an appeal against the compliance notice with the Director. 15

(4) Any person issuing a compliance notice may, on good cause shown, vary a compliance notice and extend the period within which the person must comply with the notice.

(5) If a person fails to comply with a compliance notice issued in terms of subsection (1) the person issuing such notice may report the matter to the Director and to the Director of Public Prosecutions. 20

(6) A person who fails to comply with a compliance notice issued in terms of subsection (1) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both such fine and imprisonment. 25

(7) An appeal lodged against the issuance of a compliance notice in terms of subsection (1) does not suspend the operation of such compliance notice pending the outcome of the appeal.

#### **Grounding of aircraft and closing of facility by authorised officer or inspector**

**115.** (1) In addition to any specific power granted to or duty imposed on an authorised officer or inspector under this Act, such authorised officer or inspector may, if it appears to him or her that any aircraft is intended or likely to be flown under circumstances where the flight would involve a contravention of this Act or will cause imminent danger to persons in the aircraft or to persons or property on the ground— 30

- (a) ground any aircraft which he or she reasonably believes to be unsafe, not duly registered or not airworthy; or 35
- (b) close any aviation-related facility which he or she reasonably believes does not comply with this Act.

(2) If an aircraft has been grounded in terms of this section, the aircraft must not be operated until the Director is satisfied that this Act is complied with and approves the lifting of the grounding order, or until such alterations or repairs have been effected which the Director considers necessary to render such aircraft fit for flight. 40

#### **Prohibition on exercising of certain privileges of any aviation certificate, permit or authorisation by authorised officers or inspectors**

**116.** (1) When it appears to any authorised officer or inspector on reasonable grounds that an aircraft is intended or likely to be flown in circumstances where— 45

- (a) the flight would involve a contravention of this Act; or
- (b) there is an imminent danger to persons in the aircraft or to persons or property on the ground,

such officer or inspector may prohibit the holder of an aviation certificate, a permit, or an authorisation to exercise the privileges of such aviation certificate, permit or authorisation. 50

(2) The prohibition order contemplated in subsection (1) may be withdrawn when the authorised officer or inspector is satisfied that the cause for such prohibition has ceased to exist. 55

(3) The prohibition in subsection (1) may not be imposed for a period longer than 24 hours.

(4) The procedure for the issuance of the prohibition order is as prescribed.

## CHAPTER 8

### PART 1

5

#### INTERNAL APPEAL AGAINST DECISIONS OF INSPECTORS, AUTHORISED OFFICERS AND DIRECTOR

##### Decision and procedural rights

**117.** (1) Any person taking an administrative decision in terms of this Act which may detrimentally affect the rights of another person, must give such other person— 10

(a) adequate notice of the nature and purpose of the proposed administrative decision;

(b) a reasonable opportunity to make representations;

(c) a clear statement of the administrative decision; and

(d) adequate notice of any right of internal appeal. 15

(2) Any person taking an administrative decision in terms of this Act which may detrimentally affect the rights of another person, must give such other person the reasons for the administrative decision within 14 days after the administrative decision was taken.

##### Appeal against decisions of authorised officers, authorised persons and inspectors 20

**118.** (1) Any aggrieved person or entity whose rights have been detrimentally affected as contemplated in section 117(2) may appeal against a decision of an inspector, authorised officer or authorised person to—

(a) refuse such person's or entity's application for registration, licence, certificate, approval or authorisation in terms of this Act; 25

(b) issue, subject to any condition or restriction, such person's or entity's registration, licence, certificate, approval or authorisation in terms of this Act;

(c) suspend, cancel, endorse or vary such person's or entity's registration, licence, certificate, approval or authorisation in terms of this Act;

(d) issue a compliance notice or a refusal to issue a compliance certificate in terms of section 114(1) and (2); 30

(e) ground an aircraft or close an aviation related facility in terms section 115(1); or

(f) prohibit the exercising of certain privileges of any aviation certificate, permit or authorisation in terms of section 116(1). 35

(2) An appeal in terms of subsection (1) must be lodged with the Director within 30 days after the furnishing of reasons for the decision.

(3) The Director must within three days of receiving such appeal in writing confirm, amend or withdraw the decision and make a new decision.

(4) The Director must within 14 days furnish written reasons to the appellant for any decision taken in terms of subsection (3). 40

(5) Any person aggrieved by a decision taken in terms of subsection (3) may appeal against such decision within five days of receipt of the reasons referred to in subsection (3) to an appeal committee contemplated under section 122.

(6) In adjudicating the appeal contemplated in subsection (3) the Director may afford the appellant— 45

(a) a reasonable opportunity to make representations;

(b) the opportunity to present and dispute information and arguments; and

(c) the opportunity to appear in person.

(7) The Director may on good cause shown condone any non-compliance with the time period contemplated in subsection (1). 50

(8)(a) If the Director sets aside any decision of an authorised officer, authorised person or inspector, the fees referred to in section 121 must be refunded to the appellant.

(b) If the Director varies any such decision, he or she may direct that the whole or any part of such fees be refunded to the appellant.

(9) An appeal lodged in terms of this section does not suspend the decision of the authorised officer, authorised person or inspector.

### **Appeal against refusal, cancellation, endorsement of medical certificate or declaration of unfitness** 5

**119.** (1)(a) An applicant for, or the holder of any class of medical certificate who feels aggrieved by—

- (i) a decision by the designated body or institution to cancel his or her medical certificate; 10
- (ii) a decision by a designated aviation medical examiner, declaring him or her unfit or temporarily unfit;
- (iii) any endorsement made by the designated body or institution on his or her medical certificate; or
- (iv) any endorsement made by a designated aviation medical examiner on his or her medical certificate, 15

may appeal against such decision or endorsement to the Director in the manner and on the payment of the fees prescribed by the Minister.

(b) Such appeal must be lodged within 60 days—

- (i) after receipt of the reasons for the decision; or 20
- (ii) after or he or she became aware of such decision or endorsement.

(2) An appeal lodged in terms of this section must be considered and decided by the Director assisted by at least two medical practitioners, one of whom must have experience in aviation medicine.

(3) An appeal in terms of subsection (2) must be considered and decided by the Director within 60 days of receipt thereof. 25

(4) After considering an appeal the Director may, in agreement with the medical practitioners, confirm the decision in respect of which the appeal was lodged or give such other decision as the Director and the medical practitioners may consider equitable.

(5) Any person affected by a decision referred to in subsection (4) may appeal to any provincial or local division of the High Court having jurisdiction against a decision. 30

(6) An appeal referred to in subsection (5) must be noted and proceeded with as if it were an appeal against a judgment of a magistrate's court in a civil case, and all rules applicable to such an appeal must apply to an appeal in terms of this subsection.

(7) The person appealing in terms of subsection (1) is entitled to legal representation. 35

(8) The procedure for the lodging and prosecution of appeals in terms of subsection (1) is prescribed.

(9) The Director may on good cause shown condone any non-compliance with the time period referred to in subsection (1).

(10) An appeal lodged in terms of this section does not suspend the decision or endorsement in respect of which the appeal is lodged. 40

### **Appeal against decisions of Director**

**120.** (1) Any person or entity aggrieved by a decision taken by the Director referred to in subsection 2(a) to (e) may file a written appeal with the appeal committee against such decision within 30 days after receipt of the reasons for the decision. 45

(2) Any person or entity, as the case may be, may appeal against—

- (a) a decision or decisions taken in terms of sections 98(5) and 118(3);
- (b) a decision by the Director to—
  - (i) refuse such person's or entity's application for exemption, registration, licence, certificate, approval or authorisation, or to designate one or more persons as inspectors, authorised officers or persons in terms of this Act; 50
  - (ii) issue, subject to any condition or restriction, such person's or entity's exemption, registration, licence, certificate, approval or authorisation in terms of this Act; or
  - (iii) suspend, cancel, endorse or vary such person's or entity's exemption, registration, licence, certificate, approval or authorisation in terms of this Act; 55

- (c) a decision taken in regard to the designation or withdrawal of a designation as inspectors, authorised officers or authorised persons contemplated in section 88(1);
- (d) a decision refusing to lift the grounding order as contemplated in section 115(2); 5
- (e) any decision taken in terms of section 130; or
- (f) the issuance, amendment or withdrawal of technical standards for civil aviation in terms of section 162(1)(a).
- (3) The Director must within 14 days furnish written reasons to the appellant for any decision taken in terms of subsection (2)(a) to (f). 10

### Submission of appeal to appeal committee

121. (1) Any person or entity who submits an appeal provided for in this Chapter must submit such appeal in accordance with the requirements prescribed and payment of the fees prescribed.
- (2) The appeal may be brought by the person or entity concerned or a duly authorised employee or legal representative of such person or entity. 15

## PART 2

### APPEAL COMMITTEES

#### Composition of appeal committees

122. (1) The Minister must appoint one or more appeal committees to consider and decide appeals. 20
- (2) (a) An appeal committee consists of—
- (i) a person with not less than ten years' experience as an attorney or advocate, who is the presiding officer; and
- (ii) two other persons. 25
- (b) The members of an appeal committee are appointed on a part-time basis.
- (3) In appointing the members contemplated in subsection (2)(b) the Minister must have regard to such person's technical knowledge, experience in a field related to aviation or any special skills, qualifications, expertise or experience in matters concerning aviation. 30
- (4) The members contemplated in subsection (2)(a) and (b) may be appointed only after—
- (a) the Minister has by notice in the *Gazette* and the media invited interested parties who are eligible for appointment to apply; and
- (b) the Minister is satisfied that the applicants contemplated in paragraph (a) has suitable experience or possesses the qualifications as referred to in subsection (2)(a) and (3). 35
- (5) An appellant, a person employed by the appellant, the Director, an employee of the Civil Aviation Authority, a member of the Civil Aviation Authority Board, a member of any committee of the Civil Aviation Authority Board or a civil servant may not be appointed as a member of an appeal committee. 40
- (6) A person appointed under subsection (1) may be disqualified as a member of an appeal committee if he or she has any direct or indirect personal interest in the outcome of that appeal.
- (7) A member of an appeal committee holds office for a period of three years and is, on the expiration of such member's term of office, eligible for reappointment. 45
- (8) The Minister may terminate the period of office of a member of an appeal committee—
- (a) if the performance of the member is unsatisfactory; or
- (b) if the member, either through illness or for any other reason, is unable to perform the functions of office effectively. 50
- (9) The Minister may, if the performance of an appeal committee is unsatisfactory, terminate the period of office of all the members of that appeal committee.
- (10) In the event of the termination of office of all the members of an appeal committee, the Minister may appoint persons to act as caretakers until competent persons are appointed in terms of subsection (1). 55

(11) The Minister must, subject to subsection (3), appoint a temporary replacement member for an appeal committee if, before or during an appeal, it transpires that any member of the appeal committee—

- (a) has any direct or indirect personal interest in the outcome of that appeal; or
- (b) will, due to illness, absence from the Republic or for any other good reason be unable to participate or continue to participate in that appeal.

(12) The National Treasury is responsible for the expenditure of an appeal committee.

#### **Conditions of service, remuneration, allowances of members of appeal committees and resignation of members**

123. (1) The period and conditions of office, remuneration and allowances of the members of appeal committees must be prescribed by the Minister with the approval of the Minister of Finance.

(2) A member of an appeal committee may resign by notice in writing to the Minister.

#### **Quorum and meetings of appeal committees**

124. (1) All the members of an appeal committee constitute a quorum for any meeting of the appeal committee, and a decision of the majority of the members is a decision of the appeal committee.

(2) An appeal must take place on the date and at the place and time fixed by the appeal committee.

(3) The procedure at the appeal is determined by the chairperson of the appeal committee.

(4) The chairperson may for the purposes of the hearing of an appeal—

- (a) summon any person who may give material information concerning the subject of the hearing or who has in his or her possession or custody or under his or her control any document which has any bearing upon the subject of the hearing, to appear before him or her at a time and place specified in the summons, to be interrogated or to produce that document, and the chairperson may retain for examination any document so produced;
- (b) administer an oath to or accept an affirmation from any person called as a witness at the hearing; and
- (c) call any person present at the hearing as a witness and interrogate him or her and require him or her to produce any document in his or her possession or custody or under his or her control.

#### **Decisions of appeal committees**

125. An appeal committee may confirm, vary or set aside any decision against which an appeal has been lodged in terms of section 121.

#### **General provisions regarding appeal committees**

126. (1) Appeal committees may admit evidence of facts not before the Director when he or she made the decision which is the subject of the appeal only if—

- (a) there is a reasonable explanation for the failure to timeously inform the Director of the facts; and
- (b) the Director has had sufficient opportunity to verify the facts and to present any evidence to the appeal committee in this regard.

(2) A decision of an appeal committee contemplated in section 125 must be made in writing within 21 days of the hearing of the appeal and a copy must be furnished to the Director and the appellant.

(3) Any decision signed by the chairperson of an appeal committee is a decision of that appeal committee.

(4) The chairperson of an appeal committee must maintain a record of the proceedings.

(5) No person is excused from complying with this Act on the ground that an appeal is pending in terms of this section.

(6) An appeal lodged in terms of this section does not suspend any decision of the Director pending the outcome of this appeal.

(7) If during the hearing of an appeal the presiding officer or a member of an appeal committee dies or becomes unable to act as presiding officer or member—

(a) the hearing may, with the consent of the appellant, proceed before another presiding officer; or

(b) the hearing shall start from the beginning if such consent is not given.

(8) (a) If an appeal committee sets aside any decision of the Director, the fees referred to in section 121 shall be refunded to the appellant.

(b) If the appeal committee varies any such decision, it may direct that the whole or any part of such fees be refunded to the appellant.

(9) The appellant is entitled to be represented at an appeal before an appeal committee by an advocate or an attorney.

#### **Appeal against decision of appeal committees**

127. (1) Any person affected by a decision of an appeal committee may appeal to any provincial or local division of the High Court having jurisdiction.

(2) An appeal contemplated in subsection (1) must be noted and prosecuted as if it were an appeal against a judgment of a magistrate's court in a civil case and all rules applicable to such an appeal apply to an appeal in terms of that subsection.

#### **Administrative work of appeal committees**

128. The administrative work of appeal committees must be performed by employees of the Civil Aviation Authority.

### **CHAPTER 9**

#### **PROCEDURES FOR IDENTIFYING AND NOTIFYING OF DIFFERENCES, ISSUANCE OF EXEMPTIONS BY DIRECTOR AND INTERCEPTION ORDERS**

##### **Procedures for identifying and notifying of differences**

129. The procedures for the identifying and notifying of differences are as prescribed.

##### **Issuance of exemptions by Director**

130. (1) The Director may on good cause shown exempt partially or entirely any person or body from compliance with this Act on the conditions as the Director may direct in any exemption certificate.

(2) In exempting a person or body contemplated in subsection (1) the Director must have regard to—

(a) the reasons for the required exemption;

(b) any serious and imminent risk to air safety or security;

(c) the existence of an equivalent level of safety;

(d) any imminent danger to persons or property if the person or body is exempted; and

(e) any information at his or her disposal.

(3) The Director may not grant any exemption under subsection (1) for a period longer than 180 days, which period the Director may on application in writing extend for a further period not exceeding 180 days.

(4) The procedure for the application for the issuance of exemption certificates or any extension by the Director is as prescribed.

### **Compliance with Annex 2 of Convention in respect of Marshalling Signals, Interception Manoeuvres and Orders**

131. (1) Any South African aircraft must comply with any marshalling signal, interception order or manoeuvre issued by any State in compliance with Annex 2 of the Convention. 5

(2) Any aircraft, when in South African airspace, must comply with any marshalling signal, interception order or manoeuvres issued by any South African aircraft in compliance with Annex 2 of the Convention.

## **CHAPTER 10**

### **TRANSFER OF CERTAIN FUNCTIONS AND DUTIES IN TERMS OF ARTICLE 83bis OF CONVENTION** 10

#### **Transfer of certain functions and duties**

132. (1) Notwithstanding Articles 12, 30, 31 and 32(a) of the Convention, when an aircraft registered in a Contracting State is operated pursuant to an agreement for the lease, charter or interchange of the aircraft or any similar arrangement by an operator who has its principal place of business or, if he or she has no such place of business, its permanent residence in another Contracting State, the Minister may by agreement with such other State, in accordance with Article 83bis of the Convention, transfer to it all or part of its functions and duties under Articles 12, 30, 31 and 32(a) of the Convention as State of Registry in respect of a South African aircraft. 15 20

(2) The Minister may, by agreement with such other State, in accordance with Article 83bis of the Convention, accept all or part of the functions and duties under Articles 12, 30, 31 and 32(a) of the Convention, as State of Registry in respect of such State's aircraft utilised by a South African Operator.

(3) The transfer contemplated in subsection (1) shall not have effect in respect of other Contracting States before either the agreement between States in which it is embodied has been registered with the Council of the International Civil Aviation Organisation (ICAO) and made public pursuant to Article 83bis of the Convention or the existence and scope of the agreement have been directly communicated to the authorities of the other Contracting State or States concerned by a State party to the agreement. 25 30

(4) The Director must, when an aircraft registered in a Contracting State is operated pursuant to an agreement for the lease, charter or interchange of the aircraft or any similar arrangement by an operator who has its principal place of business or, if it has no such place of business, its permanent residence, in another Contracting State, recognise the validity of licences and certificates issued by such Contracting State. 35

(5) The recognition contemplated in subsection (4) includes the recognition of certificates of airworthiness, personnel licences issued or renewed by the State of Operator, radio licences, crew licences, the transfer of the State of Registry's tasks and functions to another State of Operator, the acceptance of the tasks and functions of a State of Registry from another State and the information of the International Civil Aviation Organization (ICAO) and other States concerned with transfer arrangements. 40

## **CHAPTER 11**

### **PART 1**

#### **OFFENCES AND PENALTIES**

#### **Offences and penalties** 45

133. A person who—  
(a) on board any aircraft—

- (i) by force or threat of force or by any other form of intimidation and without lawful reason seizes, or exercises control of, that aircraft;
- (ii) commits an act of violence, including an assault or threat, whether of a physical or verbal nature, against any person, including a crew member, which is likely to endanger the safety of that aircraft; or 5
- (iii) wilfully interferes with any member of the crew of that aircraft in the performance of his or her duties;
- (b) wilfully destroys an aircraft in service or wilfully causes damage to such an aircraft, which renders it incapable of flight or causes damage to it, which is likely to endanger its safety; 10
- (c) wilfully places on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft or to cause damage to it, render it incapable of flight or endanger its safety;
- (d) wilfully destroys or wilfully damages air navigation facilities or wilfully interferes with their operation, which interference is likely to endanger the safety of aircraft; 15
- (e) communicates information which he or she knows to be false, thereby endangering the safety of an aircraft in service;
- (f) places at or in any airport, heliport or air navigation facility any device or substance which is calculated to endanger, injure or kill any person, or to endanger, damage, destroy, disrupt, render useless or unserviceable or put out of action any property, vehicle, aircraft, building, equipment or air navigation facility or part thereof, thereby endangering safety at such airport, heliport or aviation navigation facility; 20
- (g) with the intention to jeopardise the operation of an air carrier, the safety or security of an airport, heliport, aircraft in service, persons or property contaminates any aviation fuel;” 25
- (h) commits an act at an airport, which causes or is likely to cause serious injury or death;
- (i) wilfully destroys or seriously damages the facilities of a designated or licensed airport or aircraft not in service located thereon or disrupts the services of the airport through the use of any device, substance or weapon which endangers or is likely to endanger security at that airport; or 30
- (j) wilfully performs any other act which jeopardises or may jeopardise— 35
- (i) the operation of an air carrier;
- (ii) the safety of an airport, heliport, aircraft in service or of persons or property at such airport, heliport or of such aircraft,
- is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding 30 years or to both such fine and imprisonment.

**Interference with operation of air carrier, airport or heliport 40**

**134.** Any person who—

- (a) threatens, attempts or conspires to commit any offence referred to in section 133;
- (b) falsely alleges that any other person has committed or is about to commit any offence contemplated in section 133; or 45
- (c) communicates information which he or she knows to be false or incorrect and thereby interferes with or may interfere with the operation of an air carrier, airport or heliport,

is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding ten years or to both such fine or imprisonment. 50

**Nuisance, disorderly or indecent act on board any aircraft**

**135.** A person who on board any aircraft—

- (a) commits any nuisance or disorderly or indecent act;



- (b) is in a state of intoxication; or
- (c) behaves in a violent manner towards any person including a crew member which is likely to endanger the safety or security of the aircraft or of any person on board such aircraft

is guilty of an offence and on conviction liable to a fine or imprisonment for a period not exceeding six months or to both such fine and imprisonment. 5

**Interference with Director, member or staff of the Aviation Safety Investigation Board, staff of the Civil Aviation Authority or member of the Civil Aviation Authority Board**

136. (1) Any person who— 10

- (a) resists or wilfully hinders or obstructs the Director, a member or staff of the Aviation Safety Investigation Board an employee of the Civil Aviation Authority or member of the Civil Aviation Authority Board in the exercise of his or her powers or the performance of his or her duties or functions or, in the exercise of his or her powers or the performance of his or her duties or functions; or 15

- (b) in order to compel the Director, member or staff of the Aviation Safety Investigation Board, an employee of the Civil Aviation Authority or member of the Civil Aviation Authority Board to perform or to abstain from performing any act in respect of the exercise of his or her powers or the performance of his or her duties or functions, or on account of the Director, member or staff of the Aviation Safety Investigation Board or such employee or member, as the case may be, having done or abstained from doing such an act, threatens or suggests the use of violence against, or restraint upon the Director, member or staff of the Aviation Safety Investigation Board or such employee or such member or any of his or her relatives or dependants, or threatens or suggests any injury to the property of the Director, member or staff of the Aviation Safety Investigation Board or such employee or of such member or of any of his or her relatives or dependants, 20 25

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both such fine and imprisonment. 30

(2) Any person who—

- (a) conspires with or induces or attempts to induce the Director, member or staff of the Aviation Safety Investigation Board any employee of the Civil Aviation Authority or member of the Civil Aviation Authority Board not to perform his or her duty or any act in conflict with his or her duty; or 35

- (b) is a party to, assists or incites the commission of any act whereby any lawful order given to the Director, member or staff of the Aviation Safety Investigation Board an employee of the Civil Aviation Authority or member of the Civil Aviation Authority Board may be evaded, 40

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

**Smoking on board aircraft, tampering with smoke detectors, operating portable electronic device when prohibited and refusing to obey lawful instruction**

137. (1) Any person who on board an aircraft— 45

- (a) smokes in a toilet or any other place on the aircraft where smoking is prohibited;
- (b) tampers with a smoke detector or any other safety-related device on board the aircraft;
- (c) operates a portable electronic device when the operation of such a device is prohibited; or 50
- (d) refuses to obey a lawful instruction given by the commander or pilot-in-command, or given on behalf of the pilot-in-command by a crew member, for

the purpose of ensuring the safety of the aircraft or of any person or property on board or for the purpose of maintaining good order and discipline on board the aircraft,  
is guilty of an offence and on conviction liable to a fine or imprisonment for a period not exceeding ten years or to both such fine and imprisonment. 5

#### **Illegal practices in connection with cargo, baggage, mail or other goods**

**138.** Any person who within an aerodrome and without due authority—

- (a) wilfully tampers with, opens, damages, destroys or interferes with the conveyance of cargo, baggage, mail or other goods, or makes away with or interferes with such cargo, baggage, mail or other goods; 10
- (b) detains or keeps any cargo, baggage, mail or other goods which ought to have been delivered to another person or which has been found by himself or herself or by any other person; or
- (c) by false pretence or misstatement induces any person to deliver or dispose of such cargo, baggage, mail or other goods to him or her or to any other person who is not the intended addressee or recipient thereof, 15

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding ten years or to both a fine and such imprisonment.

#### **Prohibition and control in aircraft**

**139.** (1) A person may not at an airport, helistop or heliport board or attempt to board, or be on, an aircraft if such person has in his or her possession or under his or her control any harmful article or if any harmful article has to his or her knowledge been placed within his or her reach and at his or her disposal, unless the operator of the aircraft concerned has granted the necessary written permission. 20

(2) A person who wishes to consign any harmful article by aircraft, must consign the article in the manner required, and in accordance with the conditions stipulated, by the operator of the aircraft: Provided that where the Minister has by regulation in terms of this Act prescribed the manner in which, and the conditions subject to which, a harmful article under this Act or under the Convention must be consigned, such regulation must have preference in the case of a conflict between any requirement of or any condition stipulated by such operator. 25 30

(3) An air carrier may refuse to transport a person, personal effects, baggage, mail, cargo or other goods if the carrier believes on reasonable grounds that—

- (a) a person may, while on board, perform or attempt to perform any act which may jeopardise the safety of the aircraft or interfere with the flight of the aircraft; or 35
- (b) any occurrence which may jeopardize the safety of the aircraft or which may interfere with the flight of the aircraft, may arise from the transportation of such person, personal effects, baggage, mail, cargo or other goods.

(4) Any person who contravenes, or who fails to comply with this or who fails to comply with any condition of any permission granted thereunder, is guilty of an offence and on conviction liable to a fine or imprisonment for a period not exceeding 30 years or both to such fine and imprisonment. 40

#### **Prohibition and control in restricted areas**

**140.** (1) A person may not enter or attempt to enter or be within any restricted area if he or she has in his or her possession or under his or her control any harmful article or if any harmful article has to his or her knowledge been placed within his or her reach and at his or her disposal, unless that person is— 45

- (a) an authorised person;
- (b) authorised in writing by the airport manager concerned to be in that restricted area; or 50

(c) a passenger or crew member who arrived by aircraft and who is in that restricted area for the purpose of taking possession of baggage containing a harmful article, provided that such passenger or crew member, before he or she collects the baggage, declares the harmful article to any customs officer where such an officer is on duty in the restricted area or, where such an officer is not available, to an authorised person. 5

(2) An authorised person may refuse entry into any restricted area to any person, or of any baggage, personal effects, mail, cargo, vehicle or other goods, if in his or her opinion—

(a) that a person may, while he or she is within the restricted area, perform or attempt to perform any act which may jeopardise the safety of the airport or of any aircraft, aviation facility of air traffic service unit, or which may interfere with the operation thereof; or 10

(b) an occurrence which may jeopardise the safety of the designated airport or of any aircraft, aviation facility or air traffic service unit, or which may interfere with the operation, may eventuate from such person, baggage, personal effects, mail, cargo, vehicle or other goods entering the restricted area. 15

(3) A person to whom, and a person who has a legal interest in any haggage, personal effects, mail, cargo, vehicle or goods in respect of which, entry into a restricted area has been refused in terms of subsection (2), may forthwith request any person in authority over the authorised person concerned, or the airport manager, to review the refusal of the authorised person, and such person in authority or the airport manager may confirm the refusal or grant the permission required on such conditions as he or she may consider necessary. 20

(4) Any person who contravenes, or who fails to comply with this or who fails to comply with any condition of any permission granted thereunder, is guilty of an offence and on conviction liable to a fine or imprisonment for a period not exceeding 30 years or both to such fine and imprisonment. 25

#### **Prohibition and control in aviation facilities and air navigation facilities**

141. (1) A person may not have access to any aviation facility or air navigation facility without permission from a person in control of that aviation facility or air navigation facility and subject to such conditions as the person in control may stipulate. 30

(2) A person in control of any aviation facility or air navigation facility may refuse access to any person, personal effects and goods if in his or her opinion—

(a) such person may, while he or she is at or within the aviation facility or air navigation facility, perform or attempt to perform any act which may jeopardise the safety of the aviation facility or air navigation facility or any of its contents, or which may interfere with its operation; or 35

(b) any occurrence which may jeopardise the safety of the aviation facility or air navigation facility or any of its contents, may eventuate from such access. 40

(3) Any person who contravenes or who fails to comply with this section or who fails to comply with any condition of any permission granted thereunder, is guilty of an offence and on conviction liable to a fine or imprisonment for a period of not exceeding 30 years or to both such fine and imprisonment.

#### **Prohibition of conveyance of conventional arms, drugs or animal products in aircraft and interference with aircraft in flight in order to exercise criminal jurisdiction** 45

142. (1) (a) For the purposes of this section—

(i) “**animal product**” means any part or portion of, or product derived from, any animal, including any such part, portion or product in any processed form which is possessed contrary to the provisions of any other Act of Parliament or regulation promulgated in terms of such Act; 50

- (ii) “**drugs**” means any drug as defined in section 1 of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992), that has not been acquired, bought or possessed lawfully as contemplated in section 4 of that Act.

(b) For the purposes of this section the expression ‘conventional arms’ bears the meaning assigned thereto in section 1 of the National Conventional Arms Control Act, 2002 (Act No. 41 of 2002), but with the exception of any such conventional arms while being conveyed in an aircraft—

- (i) on behalf of the State; or

- (ii) by or on behalf of—

(aa) the Armaments Corporation of South Africa, Limited, referred to in section 2 of the Armaments Corporation of South Africa Limited Act, 2003 (Act No. 51 of 2003), or any undertaking or company established or promoted by the said corporation, or any member, director, employee or agent of that corporation or any such undertaking or company;

(bb) any person in his or her capacity as an officer or employee of the State; or

(cc) any person for the purpose of the Defence Act, 2002 (Act No. 42 of 2002).

(2) Except with the written permission of the Minister or a person in the service of the State authorised by the Minister and subject to such conditions as the Minister or such a person may determine, no person shall convey any conventional arms, drugs or animal product in an aircraft.

(3) An aircraft which upon reasonable grounds is believed to be engaged in conveying any conventional arms, drugs or animal product contrary to subsection (1), is subject to the provisions of the regulations with regard to the identification and interception of aircraft: Provided that any identification and interception of an aircraft shall take place with due regard to the provisions of Annex 2 of the Convention in respect of Marshalling Signals, Interception Manoeuvres and Orders of the Convention on Offences and certain other Acts committed on board Aircraft, 1963, entered into on 14 September 1963 in Tokyo.

(4) A Contracting State also being a signatory to the Convention on Offences and Certain Other Acts Committed on board Aircraft 1963 which is not the State of Registry may not interfere with an aircraft in flight in order to exercise its criminal jurisdiction over an offence committed on board, except in the following cases:

(a) The offence has an effect on the territory of such State;

(b) the offence has been committed by or against a national or permanent resident of such State;

(c) the offence is against the security of such State;

(d) the offence consists of a breach of any rules or regulations relating to the flight or manoeuvre of an aircraft in force in such State; or

(e) the exercise of jurisdiction is necessary to ensure the observance of any obligation of such State under a multilateral international agreement.

(5) Any authorised inspector or authorised officer or authorised person, may, without derogating from any power which he or she may have under the Criminal Procedure Act, at any aerodrome or place in the Republic, without a warrant—

(a) search any aircraft which he or she reasonably believes is used or have been used to convey any conventional arms, drugs or animal product contrary to subsection (1), and any cargo or goods on board such an aircraft;

(b) seize—

(i) any conventional arms, drugs or animal product found during a search carried out in terms of paragraph (a);

(ii) any aircraft on which such conventional arms, drugs or animal product are found; and

(iii) any other thing which in his or her opinion was used or is intended to be used for the commission, or in connection with the commission, of an offence in terms of this section: and

- (c) arrest any person who is found on board an aircraft contemplated in paragraph (a) and whom he or she reasonably suspects of having committed an offence under this section or of attempting to commit such an offence, and for that purpose section 133(2) applies with the necessary changes.

(6) Any person who contravenes subsection (2) is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 30 years or both such fine and imprisonment. 5

(7) (a) Any conventional arms, drugs, animal product, aircraft or other thing seized under subsection (5)(b) must be forfeited to the State unless the court finds—

- (i) in the case of such conventional arms, drugs or animal product, that they were not conveyed contrary to subsection (5)(b) and were not intended to be used for any unlawful purpose; or 10
- (ii) in the case of such an aircraft or other thing, that it was not used or intended to be used for the commission, or in connection with the commission, of any offence. 15

(b) Anything forfeited in terms of paragraph (a) must be disposed of as the Minister may either generally or in any particular case order.

(c) Paragraph (a), in so far as it relates to an aircraft, does not affect the rights which any person other than a person accused of the contravention referred to in subsection (1) may have to such an aircraft, if he or she, within 30 days of the seizure, satisfies the Minister, by means of proof in writing submitted through the Director, that he or she did not know that the aircraft was used or intended to be used for the commission, or in connection with the commission, of any offence, or that he or she could not prevent such use. 20

#### **Threat to safety and security** 25

143. (1) If the Minister, after consultation with the Director is of the opinion that any action by any person or any group of persons is of such a nature that the safety or security of any person, aircraft, airport, heliport or aviation facility is being seriously and immediately threatened, he or she or any person designated by him or her for this purpose, may issue such orders as may be considered necessary to any person or group of persons to counter such action. 30

(2) An authorised person may take such steps as he or she considers necessary to ensure that an order referred to in subsection (1) is complied with.

(3) Any person who fails or who refuses to give effect to an order issued in terms of subsection (1) is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding five years or to both such fine and imprisonment. 35

#### **Penalties for contraventions other than sections 133 to 142, 145 and 148, and imposition of administrative penalties**

144. (1) Any person who contravenes or commits an offence under this Act, the Convention or the Transit Agreement, or who fails to comply with any provision with which it is his or her duty to comply, is, except where another penalty is specially provided, liable on conviction to a fine or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment. 40

(2) If a person referred to in subsection (1)— 45

(a) is the holder of a licence, certificate or rating issued under this Act, the court convicting him or her may, in addition to any penalty which may be imposed under subsection (1), cancel or suspend for a specified period, or order the endorsement of, such licence, certificate or rating; or

(b) is not the holder of any such licence, certificate or rating, the court may declare him or her to be disqualified from holding any licence, certificate or rating under this Act for such period as the court considers necessary. 50

(3) This section applies equally to the registered owner of an aircraft and to the pilot or person in charge thereof.

(4) The penalties provided in this Act are in addition to, and not substituting any, penalties imposed under any customs law or regulation relating to the importa- 55

tion or exportation of goods, and to persons entering or leaving the Republic by aircraft.

(5) The Director may, despite and in addition to taking any step he or she may take under this Act, impose an administrative penalty on any person for any failure to comply with this Act. 5

(6) An administrative penalty referred to in subsection (5) may not exceed the amount prescribed by the Minister for each day during which such failure continues.

(7) An administrative penalty imposed under subsection (5) must be paid to the Civil Aviation Authority within the period specified by the Director.

(8) If any person fails to pay an administrative penalty within the specified period, the Civil Aviation Authority may by way of civil action in a competent court recover the amount of the administrative penalty from such person. 10

## PART 2

### SEARCH, SEIZURE AND POWERS OF ARREST OF AUTHORISED PERSONS, OFFENCES AND PENALTIES IN CONNECTION WITH SUCH SEARCH AND SEIZURES BY AUTHORISED PERSONS 15

#### Search, seizure and powers of arrest by authorised persons

145. (1) An authorised person may, in the interests of aviation security, without a warrant, search any person, baggage, vehicles, personal effects, cargo or goods, before or after boarding, disembarking, loading or off-loading the aircraft, as the case may be. 20

(2) The Minister may direct the manager of any airport or heliport, or air carrier in respect of any particular airport or heliport, to ensure the search of all persons, baggage, vehicles, personal effects, cargo or goods before loading or after off-loading.

(3) Any person who fails to comply with any direction under subsection (2) is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding three years or to both such fine and imprisonment. 25

(4) An air carrier may not transport any person or his or her baggage, personal effects, cargo or goods if such person refuses to be searched or to have his or her baggage, personal effects, cargo or goods searched under subsection (1).

(5) If an airport manager believes on reasonable grounds that it is necessary for the security of the airport that a person or vehicle, or the baggage or personal effects of a person or any vehicle, cargo or goods which are to enter a restricted area be searched, he or she may direct any authorised person to conduct such a search without a warrant. 30

(6) The Minister may direct the manager of any airport, or the manager of any organisation conducting any business at any particular airport, that any person or vehicle or the baggage or personal effects of any person entering any restricted area at the designated airport, or that any vehicle or cargo which is, or any goods which are, to enter a restricted area at the designated airport, be searched by an authorised person without a warrant. 35

(7) Any person who fails to comply with any direction under subsection (6) is guilty of an offence and on conviction liable to a fine or imprisonment for a period not exceeding three years or to both such fine and imprisonment. 40

(8) Any authorised person may, if on reasonable grounds believe that the search is necessary for the security of any airport, aircraft passengers or any aviation facility, or to avoid interference with the operation of an air carrier, airport or an air navigation facility, search, without a warrant, any building, structure, equipment, vehicle, cargo, goods or aircraft. 45

(9) Any authorised person may without a warrant search any aviation facility or its contents, or any person, vehicle or article found in it, if he or she has reasonable grounds to believe that the search is necessary in the interests of aviation security, or to avoid interference with the operation of such facility. 50

(10) An authorised person may, in writing, order a person who refuses to be searched, or to have his or her baggage, vehicle or personal effects searched, to immediately leave the airport or heliport, as the case may be, and not to return for a specified period, which period may not exceed 24 hours.

(11) An authorised person may, in writing, order a person who refuses to have his or her cargo, goods, vehicle or article searched, to immediately remove such cargo, goods, vehicle or article from the airport or heliport, as the case may be. 5

(12) Any person who fails to comply with the order contemplated in subsection (10) or (11) is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding three years or to both such fine and imprisonment. 10

(13) Any search contemplated in this section must be conducted with strict regard for decency and order and with respect for each person's right to dignity, freedom, security and privacy.

(14) Any person executing a warrant in terms of this section may be accompanied and assisted by a police officer. 15

(15) During any search under this section, only a female authorised person may search a female person, and only a male authorised person may search a male person.

#### **Seizure or retention of harmful articles**

**146.** (1) An authorised person may seize any harmful article found during a search carried out under section 145 or retain such article for safe custody while the person in whose possession or custody or under whose control the article was found, remains on the aircraft or in the restricted area or at or in the aviation facility, as the case may be. 20

(2) A harmful article seized under subsection (1) must be delivered to a police official as defined in section 1 of the Criminal Procedure Act, and must be dealt with and be disposed of under that Act. 25

#### **Powers of arrest of authorised person**

**147.** (1) An authorised person may under circumstances where there are no other means of ensuring the presence of a person in court without a warrant arrest any person who has committed or is reasonably suspected to have committed any offence referred to in this Act. 30

(2) The authorised person may, in order to effect the arrest, use such force as may in the circumstances be reasonably necessary to overcome resistance or to prevent the person concerned from fleeing, and may call on any person to assist him or her to effect the arrest.

#### **Call for identification** 35

**148.** (1) An authorised person or an employee with the written authorisation of the airport or heliport manager or the person in control of the aviation facility, as the case may be, may, if he or she considers it necessary in the interests of security, call upon any person at, in or upon any airport, heliport or air navigation facility to furnish him or her with his or her full names and address. 40

(2) Any person who fails to furnish his or her full names and address or who furnishes false or incorrect information, is guilty of an offence and on conviction liable to a fine or imprisonment for a period not exceeding 30 days or to both such fine and imprisonment.

## CHAPTER 12

DELEGATION OF POWERS, ACTS AND OMISSIONS TAKING PLACE  
OUTSIDE REPUBLIC, JURISDICTION, EXTRADITION AND  
ADMISSIBILITY OF CERTAIN STATEMENTS

<b>Delegation of powers</b>	5
<b>149.</b> (1) The Minister may upon the conditions that he or she deems fit, delegate in writing any or all the powers conferred upon him or her in terms of this Act, save a power to make regulations, to the Director.	
(2) A power delegated to the Director may not be further delegated by the Director to any person under his or her control or to an authorised person, authorised officer or inspector.	10
(3) The Minister may at any time revoke in the same manner any delegation under subsection (1) and no delegation of any power shall prevent the exercise of that power by the Minister himself or herself.	
<b>Acts or omissions taking place outside Republic</b>	15
<b>150.</b> (1) Any act or omission on board of a South African registered aircraft outside the Republic which, if it took place in or over the Republic, would have been an offence, constitutes that offence.	
(2) Any act contemplated in sections 138, 139, 141 and 142 committed outside the Republic on board any aircraft in flight, other than a South African registered aircraft, and any act of violence against passengers or crew committed on any such aircraft by a person in connection with an act contemplated in section 133, is considered to have been committed also in the Republic—	20
(a) if such aircraft lands in the Republic with the person who committed any such act, still on board;	25
(b) if such aircraft is leased without crew to a lessee who has his or her principal place of business or permanent residence in the Republic;	
(c) if that person is present in the Republic; or	
(d) if that person is apprehended in the Republic.	
<b>Jurisdiction</b>	30
<b>151.</b> Any offence contemplated in section 150(2) is, for the purposes of jurisdiction of a court, considered to have been committed in any place where the accused happens to be, or is found.	
<b>Extradition</b>	
<b>152.</b> For the purposes of the application of the Extradition Act, 1962 (Act No. 67 of 1962), to an offence committed on board an aircraft in flight—	35
(a) any aircraft registered in any Convention country must, at any time while that aircraft is in flight, be considered to be within the jurisdiction of that country, irrespective of whether or not it is for the relevant time being also within the jurisdiction of any other country;	40
(b) the landing of such aircraft in any other Convention country with the offender still on board will result in the offence being considered to have been committed also in that country;	
(c) where the aircraft was leased without crew to a lessee who has the principal place of business or permanent residence in any other Convention country, the offence must be considered to have been committed also in that country.	45
<b>Admissibility of certain statements</b>	
<b>153.</b> (1) If in any proceedings, before a court in the Republic for an offence committed on board an aircraft the evidence of any person is required and the court is satisfied that that person cannot be found in the Republic, any statement relating to the subject matter is admissible as evidence if it is made on oath by that person to an officer having functions corresponding to the functions, in the Republic, either of a judge or of a	50



magistrate or of a consular officer and which affidavit is authenticated in terms of Rule 63 of the Uniform Rules of Court published under section 43 of the Supreme Court Act, 1959 (Act No. 59 of 1959).

(2) Any such statement must be authenticated by the signature of the officer before whom it was made, who must certify that the person in question was present at the taking of the statement. 5

(3) It is not necessary in any proceedings to prove the signature or official character of the person appearing so to have authenticated any such statement or to have given such a certificate, and such certificate is, unless the contrary is proved, sufficient evidence in any proceedings that the person charged with the offence was present at the making of the statement. 10

## CHAPTER 13

### POWERS OF COMMANDER ON BOARD AIRCRAFT AND PENALTIES IN CONNECTION WITH ANY CONTRAVENTION THEREWITH

#### Powers on board aircraft 15

**154.** (1) The commander of an aircraft in flight must, when he or she on reasonable grounds believes that any person on board the aircraft—

(a) has done or is about to do any act, which jeopardises or may jeopardise the safety of the aircraft, the safety of persons or property on board or the good order and discipline on board the aircraft; or 20

(b) has committed any act which is a serious offence under the law in force in the State of Registry of the aircraft, take such measures, including restraint of that person, as may be necessary—

(i) to protect the safety of the aircraft or of persons or of property on board the aircraft; 25

(ii) to maintain good order and discipline on board the aircraft; or

(iii) to enable him or her to disembark or deliver that person in accordance with subsection (5).

(2) The commander may require or authorise the assistance of other crew members and may request or authorise, but may not require, the assistance of passengers to restrain any person whom the commander is entitled to restrain under subsection (1). 30

(3) Any crew member or passenger may, without the authorisation of the commander, take in respect of any person on board the aircraft any reasonable preventive measures which he or she believe, on reasonable grounds, that are immediately necessary to protect the safety of the aircraft or of persons or of property on board the aircraft. 35

(4) Any restraint imposed on any person in terms of subsections (1) and (2) and (3), may not be continued with after the aircraft has ceased to be in flight unless—

(a) for the purposes of disembarking or delivering such person under restraint to the appropriate authorities in terms of subsection (5); or

(b) the person under restraint has agreed to continue the journey under restraint on board that aircraft. 40

(5) The commander of an aircraft may, in relation to the person mentioned in subsection (1)—

(a) disembark that person in any country in which that aircraft may be; and

(b) deliver that person— 45

(i) in the Republic, to a member of the South African Police Services, or to an immigration officer; or

(ii) in any other Convention country, to an officer having functions corresponding to the functions, in the Republic, either of such a member or of an immigration officer. 50

(6) The commander of an aircraft—

(a) who disembarks a person in terms of subsection (5) must report the disembarkation and the reasons thereof, to the appropriate authority in the

- country of disembarkation and the diplomatic or consular offices of the country of nationality of that person; or
- (b) if he or she intends to deliver such a person to the officer indicated in subsection (5)(b), the Commander must give notice of his or her intention including his or her reasons, to that officer, before or as soon as reasonably practicable after landing. 5
- (c) must furnish the appropriate authority in the country of disembarkation with evidence and information which, under the laws of the State of Registry of the aircraft, are lawfully in his or her possession.
- (7) Any commander of an aircraft who without reasonable cause fails to comply with the requirements of subsection (5) is guilty of an offence and on conviction is liable to a fine or imprisonment for a period not exceeding six months or to both such fine and imprisonment. 10
- (8) Nothing contained in this section shall prejudice the admission as evidence of any statement which is admissible in evidence apart from this section. 15

## CHAPTER 14

### REGULATIONS

#### PART 1

#### Regulations

155. (1) The Minister may make regulations regarding— 20
- (a) the carrying out of, or the giving effect to this Act, the Convention and Transit Agreement;
- (b) the powers or the duties of the Director, including the issue, the amendment or the withdrawal of technical standards for civil aviation, and the determination of the matters in respect of which such standards may be issued; 25
- (c) the qualifications, the powers or the duties of authorised officers, inspectors and authorised persons;
- (d) the designation of medical examiners for the purposes of this Act, including— 30
- (i) the manner in which, and the person by whom, such designation may take place;
- (ii) the suspension or the withdrawal of such designation;
- (iii) the conditions, the requirements or the qualifications for such designation; and
- (iv) the certificates issued by the said examiners and the conditions or the requirements for such issue; 35
- (e) the designation of one or more bodies or institutions for the purposes of this Act—
- (i) to exercise control over medical examinations and tests and to exercise control over the persons performing such examinations or tests;
- (ii) to determine standards for such examinations and tests and to determine standards for the training of such persons; 40
- (iii) to issue, amend, suspend or withdraw medical certificates and to keep all books or documents regarding such examinations or tests;
- (iv) to advise the Director on any matter connected with such examinations, tests or persons and on the training of the persons specified in the regulations and any other medical matters as the Director may require; and 45
- (v) in the absence of such designation such duties to be the responsibility of the Director or any authorised officer designated as such by the Director.
- (f) the designation of one or more bodies or institutions for the purposes of this Act— 50
- (i) to exercise control over the training courses specified in the regulations, over the tests or the verifications of skill or proficiency specified in the regulations, and over the persons conducting such courses, tests or verifications; 55
- (ii) to determine standards for such courses, tests or verifications and for the training of such persons;

- (iii) to issue or confirm certificates for the successful completion of such courses, tests or verifications, to suspend or to withdraw such certificates, and to keep all books or documents regarding such courses, tests or verifications; and
  - (iv) to advise the Director on any matter connected with such courses, tests, verifications or persons; 5
- (g) the designation of one or more bodies or institutions for the purposes of this Act—
  - (i) to exercise control over the aviation recreational activities specified in the regulations; 10
  - (ii) to determine standards for the airworthiness or the operation of aircraft engaged in aviation recreational activities; and
  - (iii) to advise the Director on any matter connected with the airworthiness or the operation of aircraft engaged in aviation recreational activities and on the licensing of persons involved in aviation recreational activities: 15
- (h) the designation of one or more bodies or institutions for the purposes of this Act—
  - (i) to promote aviation safety or to reduce the risk of aircraft accidents or aircraft incidents; and
  - (ii) to advise the Director on any matter connected with the promotion of aviation safety or the reduction of the risk of aircraft accidents or aircraft incidents; 20
- (i) the reporting or the investigation of aircraft accidents or incidents, including—
  - (i) the persons by whom or to whom such accidents or incidents must be reported; 25
  - (ii) the procedure to be followed in reporting such accidents or incidents or in investigating such accidents or incidents;
  - (iii) the imposition of a prohibition, pending investigation, of access to or interference with any aircraft involved in an accident or an incident and the granting of authorisation to one or more persons, in so far as it may be necessary for the purposes of the investigation, to have access to such aircraft, to examine or to remove such aircraft, to take steps for its preservation or to deal with it otherwise; and 30
  - (iv) the investigation of any other accident or incident reported in respect of the provision of any air traffic service; 35
- (j) the exercising of control over the conveyance in aircraft of dangerous goods specified or defined in the regulations, including—
  - (i) the imposition of a prohibition of the conveyance of such goods; and
  - (ii) the issue of licences or certificates to persons specified in the regulations and engaged in the consigning or acceptance of such goods; 40
- (k) the requirements to be complied with or the steps to be taken in connection with the conveyance in aircraft of any animal as defined in section 1 of the Animals Protection Act, 1962 (Act No. 71 of 1962), or any fish as defined in section 1 of the Marine Living Resources Act 1998 (Act No. 18 of 1998); 45
- (l) the delimitation, the designation or the restriction of airspace, including—
  - (i) the designation of airspace for the purposes specified in the regulations;
  - (ii) the restriction or the prohibition of aircraft from flying within any airspace specified in the regulations;
  - (iii) the conditions under which, the airspace within which or the aerodromes at which aircraft coming from any place outside the Republic lands and the conditions under which, the airspace within which or the aerodromes from which aircraft departs to any place outside the Republic; and 50
  - (iv) the provision of measures to prevent aircraft from flying within any airspace in contravention of any such restriction or prohibition or from entering or leaving the Republic in contravention of this Act; 55

- (m) the provision of general operating rules, flight rules and air traffic rules in respect of civil aviation, including—
- (i) the terminology, including definitions, abbreviations and units of measurement to be used in air and ground operations;
  - (ii) the identification, the classification or the registration of aircraft; 5
  - (iii) the identification, the licensing or the certification of persons engaged in any civil aviation activity;
  - (iv) the prevention of nuisances arising from air navigation, aircraft factories, aerodromes or other aircraft establishments, including the prevention of nuisance due to noise or vibration originating from the operation of machinery in aircraft on or above aerodromes, whether by the installation in aircraft or on aerodromes of means for the prevention of such noise or vibration or otherwise; 10
  - (v) the approval or, where appropriate, the design of letdown and missed approach procedures; 15
  - (vi) the safety or the security of persons and property, including the conditions under which any aircraft must be operated, the conditions under which any act may be performed in or from an aircraft and the maximum hours of duty of flight crew, cabin crew or air traffic service personnel for the purposes of aviation safety; 20
  - (vii) the signals or other communications which may or must be conveyed by or to any aircraft, or any person therein, and the acknowledgement of, or the compliance with, such signals or communications;
  - (viii) the coordination of frequency allocations in bands of the radio spectrum allocated for civil aviation use; 25
  - (ix) the determination of standards for the maintenance of any air navigation infrastructure;
  - (x) the flight inspection of any such air navigation infrastructure;
  - (xi) the classification of airports as schedules facilitated or coordinated airports, including the determination, implementation, monitoring and enforcement of slot coordination rules at coordinated airports; 30
  - (xii) the determination of any special slot coordination rules or requirements necessary during special events or in preparation for such special events hosted in the Republic; and
  - (xiii) the appointment of slot coordinator and slot coordination committee and requirements for such appointment; 35
- (n) the use, the registration, the licensing, the inspection or the management of aerodromes, including—
- (i) the prevention of interference with aerodromes and other civil aviation related facilities; 40
  - (ii) the imposition of a prohibition or the regulation of the use of unlicensed aerodromes;
  - (iii) the approval for the siting of any air navigation infrastructure which is not situated on an aerodrome;
  - (iv) the certification of categories of operations at aerodromes; 45
  - (v) the access to aerodromes or other places where aircraft have landed or the access to civil aircraft factories for the purposes of the inspection of the work carried on therein;
  - (vi) the imposition of a prohibition or the regulation of the erection or the coming into existence of any obstruction exceeding the height specified in the regulations within the distance so specified from any aerodrome; 50
  - (vii) the lighting and marking of obstructions which are situated at any aerodrome or within the distance specified in the regulations from any aerodrome, or which exceed the height so specified, or which, according to criteria so specified, constitute a danger to aircraft; 55
  - (viii) the imposition of a prohibition of, or the exercising of control over, lights at or in the neighbourhood of any aerodrome;
  - (ix) the registers, documents or the records to be kept at licensed aerodromes and the manner in which they must be kept;
  - (x) the technical, operational, security, safety and environmental management and protection standards in respect of a company airport as defined 60

- in section 1 of the Airports Company Act, 1993 (Act No. 44 of 1993), and designated airports; and
- (xi) the identification, licensing and certification and the approval of persons engaged in any activity on an aerodrome of management or operational nature that has an impact on the safety of such activity, be it of a specific or a general nature. 5
- (o) the provision or the organisation of air traffic or navigation services, aviation meteorological, security or communication services and any other civil aviation related services, including the licensing or the certification of aircraft design, manufacturing or maintenance organisations or aviation training organisations and the designation of aviation meteorological organisations; 10
- (p) the determination of standards or specifications in respect of civil aircraft or aircraft components, persons engaged in any civil aviation activity and civil aviation related services, facilities or equipment, including—
- (i) for the purposes of ensuring the safe operation of aircraft, the imposition of a prohibition or the regulation of the use in aircraft or aircraft engines or parts, instruments, accessories or other materials which do not conform to the specifications or standards of quality or manufacture specified in the regulations; 15
- (ii) the requirements relating to the airworthiness, the design, the performance, the operation or the maintenance of aircraft, aircraft components or aircraft equipment and the specifications for materials used, or the standards or the processes which must be applied, in the construction of aircraft, aircraft components or aircraft equipment; and 20
- (iii) the determination of standards for the training, the grading, the licensing or the certification of persons engaged in any such activity; 25
- (q) the manner in which, or the conditions under which, any licence or certificate required by or under this Act, the Convention or Transit Agreement must be issued, renewed or confirmed, including—
- (i) the courses, the examinations, the inspections, the tests or the verifications which must be passed or measured up to; and 30
- (ii) the form, the custody, the production, the cancellation, the suspension, the endorsement or the surrender of any such licence or certificate;
- (r) the publication of aeronautical information;
- (s) the manuals, the registers, the records or the other documents to be kept for the purposes of this Act, the Convention or Transit Agreement and the manner in which they must be kept; 35
- (t) subject to subsection (2), the fees to be paid in respect of the matters specified in the regulations;
- (u) the exemption from any of the provisions of this Act, the Convention or Transit Agreement of any aircraft operated for experimental purposes, of any other aircraft or of any person in the circumstances or under the conditions specified in the regulations; 40
- (v) national aviation disaster plans and next-of-kin plans in the event of an aircraft accident; 45
- (w) the conditions of insurance in respect of third party liability, that aircraft owners shall insure for in relation to the category of aircraft;
- (x) the regulation, requirements, standards, time tables and procedures with regard to the managed approach to the phasing out of aircraft based on aviation safety and environmental considerations, as guided by the applicable International Conventions and Resolutions of the General Assembly of the International Civil Aviation Organization; 50
- (y) the calculation of aircraft noise contours and the monitoring of aircraft noise;
- (z) any fees that may be charged by the Civil Aviation Authority for the provisioning of services to— 55
- (i) participants in civil aviation; and
- (ii) aircraft passengers;

- (aa) the establishment, constitution and functions of a committee to advise the Minister and interested persons with regard to the security of civil aviation and the effective application of the provisions of this Act;
- (bb) the drawingup of plans with regard to measures which must be adopted in order to promote or ensure the security of civil aviation and the effective application of this Act (hereinafter in this subsection referred to as 'security plans'), the approval of security plans and the secrecy thereof; 5
- (cc) the designation of officers in the service of the State or persons in the service of the Civil Aviation Authority to apply the provisions of this Act or any security plan, and the other functions of such officers or persons; 10
- (dd) the designation, training, certification, qualifications and functions of persons charged with the application of security measures at particular airports and in respect of flights with aircraft;
- (ee) the administrative steps which must precede the designation by the Minister, in accordance with definition of 'designated airport', of any airport or heliport as a designated airport; 15
- (ff) (i) the part of the expenses incurred in connection with the application of a security plan or of this Act which must be met by the State; and  
(ii) the duty of airport managements and air carriers to render available particular equipment at airports and to employ persons for the purposes of the application of the provisions of this Act or any security plan; 20
- (gg) (i) fees for the reimbursement of expenses in relation to the provision of security services for aircraft or at airports, heliports or helistops;  
(ii) the prohibition or the control of the publication of incidents relating to security or affecting the safe and orderly operation of an air carrier, designated airport, airport or heliport or of an aircraft in flight, or of the publication of any particulars or information relating to any measures dealing with the security of an aircraft, designated airport, airport or heliport or air navigation facility, including particulars or information relating to any plan or program, staff, device or system, agreement or special procedure in connection with security; 25 30
- (hh) the serving and consumption of intoxicating liquor on aircraft, the responsibility of air carriers and the training and powers of crew members of aircraft in this regard, the manner in which beverage containers must be stored and handled and the admission to aircraft of persons who are under the influence of intoxicating liquor or drugs; 35
- (ii) cargo and cargo security;
- (jj) procedures to prevent the disruptive or unruly conduct of passengers;
- (kk) the designation of the authorities or entities responsible for the provision of aviation services; 40
- (ll) aircraft accident and incident notification procedures;
- (mm) the issuing of foreign and other operating certificates;
- (nn) the fees payable to the Civil Aviation Authority for the lodging of appeals in terms of Chapter 8; and
- (oo) generally, any matter which the Minister may consider necessary or expedient to prescribe in order that the objects of this Act or the Convention may be achieved and the generality of this paragraph must not be limited by the preceding paragraphs. 45
- (2) Different regulations may be made in respect of different air carriers, designated airports, airports, heliports or air navigation facilities, cargo, training and certification of screeners. 50
- (3) A regulation may provide for such incidental, supplementary or transitional matters as may be necessary.
- (4) Any regulation—
- (a) only comes into operation on publication in the *Gazette*; and 55

(b) must be tabled in Parliament by the Minister within 14 days of publication in terms of paragraph (a) or, if Parliament is not then in session, at the commencement of its next ensuing session.

(5) A regulation relating to a financial matter may only be made after consultation with the Minister of Finance. 5

(6) Any regulation made under this section may prescribe different categories of offences and penalties for the contravention thereof or failure to comply therewith or with any provision of any security plan approved by the Minister, the mode of enforcing such penalties, the imposition of different penalties in case of a second or subsequent contravention or non-compliance, but no such penalty must exceed the penalties mentioned in section 133. 10

(7) Any regulation made under this section may prescribe the amount payable upon the failure of any person to pay an administrative penalty in terms of section 144 for every day during which such failure continues.

## PART 2

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### APPLICATION OF CONSULTATIVE STRUCTURES AND CIVIL AVIATION REGULATIONS COMMITTEE

#### Application

- 156.** (1) This Part applies to—
- (a) the institution of consultative structures by the Civil Aviation Authority for the purposes of the making of regulations in terms of section 155; 20
  - (b) the procedures relating to—
    - (i) the introduction of any regulation to be made under section 155;
    - (ii) the amendment or withdrawal of any regulation made under section 155;
    - (iii) the introduction of any technical standard to be issued under section 163; 25
    - and
    - (iv) the amendment or withdrawal of any technical standard issued under section 163; and
  - (c) the procedures relating to the application for, and the granting of, an exemption from any requirement prescribed in the regulations. 30
- (2) The provisions of this Part dealing with the matters contemplated in subsection (1)(c), shall apply with the necessary changes in respect of applications for, and the granting of, exemptions in any other case envisaged in section 155(1)(u).
- (3) This Part does not apply in respect of—
- (a) a particular case where the Civil Aviation Authority finds compliance with any procedure prescribed in this Part to be impractical, unnecessary or contrary to the public interest; and 35
  - (b) any application for an exemption made in terms of regulation 92.00.3 of the Civil Aviation Regulations, 1997.
- (4) No regulation, technical standard or exemption shall be invalid merely because a requirement in this Part has not been complied with. 40

#### Institution of the Civil Aviation Regulations Committee

- 157.** (1) The Director must institute a Civil Aviation Regulations Committee to advise the Minister on proposals with regard to—
- (a) the introduction of any regulation to be made under section 155; 45
  - (b) the amendment or withdrawal of any regulation made under section 155;
  - (c) the introduction of any technical standard to be issued under section 163;
  - (d) the amendment or withdrawal of any technical standard issued under section 163;
  - (e) any matter relating to civil aviation, including any such matter referred to it by the Director. 50
- (2) The members of the committee shall consist of—

- (a) the Director;
- (b) the Chairperson of each subcommittee established by the committee in terms of section 159; and
- (c) such persons appointed by those stakeholders and recognised by the Director which must include representation from:
  - (i) the general aviation, recreational aviation and commercial aviation industry;
  - (ii) the Air Traffic and Navigation Services Company Limited contemplated in section 2 of the Air Traffic and Navigation Services Company Act, 1993 (Act No. 45 of 1993);
  - (iii) the South African Police Services;
  - (iv) the South African National Defence Force;
  - (v) the Airports Company contemplated in section 2 of the Airports Company Act, 1993 (Act No. 44 of 1993);
  - (vi) the Department; and
  - (vii) any other stakeholder as determined by the Director.

(3) Subject to the provisions in this section, the committee shall in consultation with the Director, determine the procedures to be followed in the performance of its functions.

(4) The Director appoints the Chairperson of the committee as contemplated in subsection (1).

#### Meetings of committee

158. (1) The committee must hold meetings at least twelve times a year at such times and places as may from time to time be determined by the Chairperson.

(2) (a) The Chairperson must preside at every meeting of the committee.

(b) If the Chairperson is absent from a meeting of the committee, the members present must from among the members elect a person to preside at that meeting.

(3) The procedures to be followed at meetings of the committee must be determined by the Chairperson.

(4) The committee shall cause minutes to be kept of every meeting thereof.

(5) The minutes referred to in subsection (4), shall be kept at the offices of the Director.

(6) Notwithstanding subsection (1) the Director may any time call an extraordinary meeting of the committee in circumstances which he deems necessary and in the public interest.

#### Subcommittees of committee

159. (1) The committee may, with the approval of the Director, establish such subcommittees as it may deem necessary for the performance of its functions.

(2) The membership of each subcommittee established in terms of subsection (1) shall be unlimited.

(3) The Chairperson of the committee shall appoint a Chairperson for each subcommittee so established.

(4) Subject to the provisions of this section, the committee shall, after consultation with the Director, determine the procedures to be followed by a subcommittee in the performance of its functions.

(5) The provisions of section 158 shall apply with the necessary changes in respect of any meeting held by a subcommittee.

#### Remuneration of members

160. A member of the committee referred to in section 157 and a member of any subcommittee established in terms of regulation 159 shall not receive any remuneration or allowance from the Department in respect of the functions performed by such member as a member of the committee or a subcommittee.



**Administration**

**161.** All administrative work as well as secretarial work, in connection with the performance of the functions of the committee and any subcommittee established in terms of this part, shall be carried out by employees of the Authority.

**Emergency regulations**

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**162.** (1) Notwithstanding the provisions contained in this Part, the Director may, in the event of any threat or imminent threat to safety and security or in the event of any person, aircraft, airport, heliport or aviation facility being seriously and immediately threatened, initiate the promulgation of emergency regulations in order to counter any such threat or imminent threat.

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(2) Any regulation issued in terms of subsection (1) must not be inconsistent with the provisions of the Constitution or any other law administered by the Civil Aviation Authority.

(3) Any regulation promulgated as contemplated in subsection (1) must be reconsidered by the committee as referred to in section 157 of this Part, within 90 days of promulgation of such regulation which committee may propose the repeal, variation or amendment of such regulation.

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**CHAPTER 15****TECHNICAL STANDARDS****Technical standards for civil aviation**

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**163.** (1) (a) The Director may issue technical standards for civil aviation on such matters as may be prescribed by regulation.

(b) The manner in which any technical standard for civil aviation must be issued, amended or withdrawn, and the procedure to be followed in respect of any such issue, amendment or withdrawal, must be as prescribed by regulation.

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(2) The Director may incorporate into a technical standard any international aviation standard or any amendment, without stating the text of such standard or amendment, by mere reference to the title, number and year of issue of such standard or amendment or to any other particulars by which such standard or amendment is sufficiently identified.

(3) An officer in the Department designated by the Director for that purpose must keep in his or her office a copy of the complete text of each international aviation standard or each amendment thereof which has been incorporated into any technical standard in accordance with subsection (2), and must at the request in writing of any interested person make such copy available free of charge to such person for inspection or for making a copy, at such person's expense, at a place approved by the said officer.

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(4) Whenever in any judicial proceedings the question arises whether any writing contains the text of any international aviation standard or any amendment thereof which has been incorporated into any technical standard in accordance with subsection (2), any document purporting to be a statement by a person who in that statement alleges that he or she is a person in the service of the Authority and that a particular writing described in or attached to the statement contains the said text is, on its mere production at those proceedings by any person, proof of the facts stated therein.

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(5) For the purposes of this section, 'international aviation standard' means—

(a) any international standard or recommended practice or procedure adopted by the International Civil Aviation Organization for the purposes of Article 37 of the Convention;

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(b) any standard, rule or requirement prescribed by the law of any other contracting State of the International Civil Aviation Organization; or

(c) any other technical standard which is contained in a document which in the opinion of the Director is too voluminous to be published in the normal manner.

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## CHAPTER 16

TRANSITIONAL PROVISIONS, REPEAL AND AMENDMENT OF LAWS,  
ACTS BINDING ON STATE, SHORT TITLE AND COMMENCEMENT

## Transitional provisions

- 164.** (1) Any proclamation and regulation made under the Aviation Act 1962 (Act No. 74 of 1962), Civil Aviation Offences Act, 1972 (Act No. 10 of 1972), and the South African Civil Aviation Authority Act 1998 (Act No. 40 of 1998), shall remain in force until replaced by an Act of Parliament, or regulation made under this Act, as the case may be. 5
- (2) Any authorisation, certificate, licence, permission, permit or registration issued in terms of an Act repealed by section 166 which was valid immediately before the commencement of this Act, remains valid for the period specified in the authorisation, certificate, licence, permission, permits, registration or determination, as the case may be, unless terminated, cancelled or suspended in terms of this Act. 10
- (3) Any person who occupied a post or served in a particular capacity in terms of an Act repealed by section 166 immediately prior to the commencement of this Act continues to occupy or to serve in the corresponding post or capacity designated in this Act. 15
- (4) A reference in the Aviation Act, 1962 (Act No. 74 of 1962) to the Commissioner appointed under section 5 of the Aviation Act 1962 (Act No. 74 of 1962), shall be construed as a reference to the Director in this Act. 20
- (5) A reference in the South African Civil Aviation Authority Act 1998 (Act No. 40 of 1998) to the Chief Executive Officer appointed under section 11 of the South African Civil Aviation Authority Act 1998 (Act No. 40 of 1998), shall be construed as a reference to the Director in this Act. 25
- (6) Any person who received any allowance, remuneration or other benefit or privilege by virtue of a post or capacity contemplated in subsection (3) must continue to receive such allowance, remuneration or other benefit or privilege from the same source and in the same manner after the commencement of this Act.
- (7) Any person who received any allowance, remuneration, any leave, pension or other benefits which have accrued in any person's favour or other benefit or privilege by virtue of a post or capacity held by such person in terms of the repealed Acts in Schedule 2 immediately prior to the commencement of this Act is regarded as having been accrued in the person's favour. 30
- (8) Any power exercised or duty performed by the chief executive officer or the Commissioner for Civil Aviation by virtue of a provision of an Act administered by the Authority and in terms of section 4(2) of the South African Civil Aviation Authority Act, 1998 (Act No. 40 of 1998), immediately before the commencement of this Act, must be considered as having been exercised or performed by the Director. 35
- (9) On the date of commencement of this Act— 40
- (a) all assets, liabilities, rights and obligations of the South African Civil Aviation Authority, as it existed immediately prior to the commencement of this Act, pass to the Civil Aviation Authority established by this Act; and
- (b) subject to this Act, anything done by or on behalf of the South African Civil Aviation Authority is deemed to have been done by the Civil Aviation Authority. 45
- (10) The Civil Aviation Authority Board which is in office at the time of the promulgation of this Act will be deemed to be the Civil Aviation Authority Board established in terms of section 75 of the this Act and will dissolve at the end of the financial year following the commencement of this Act or a date determined by the Minister. 50
- (11) Any rule, requirement, directive or decision made, put or issued or other thing done under or in terms of any provision of the repealed Acts in Schedule 2 as it was in force immediately prior to the commencement of this Act, shall be deemed to have been made, put, issued or done under or in terms of the corresponding provision of this Act. 55

**Matters pending under previous Acts**

**165.** (1) The promulgation of this Act does not affect any proceedings instituted in terms of the previous Acts administered by the Civil Aviation Authority which were pending in a court of law immediately before the date of commencement of this Act, and such proceedings must be disposed of in the court in question as if this Act had not been passed. 5

(2) Criminal proceedings contemplated in subsection (1) must be regarded as having been pending if the person concerned had pleaded to the charge in question.

(3) Any administrative investigation or board of inquiry instituted in terms of the previous Act which was pending must be disposed of as if this Act had not been passed. 10

(4) No proceedings may continue against any person in respect of any contravention of a provision of the previous Act if the alleged act or omission constituting the offence would not have constituted an offence if this Act had been in force at the time when the act or omission took place.

(5) (a) Despite the repeal of the previous Act, any person who, before such repeal, committed an act or omission which constituted an offence under that Act and which constitutes an offence under this Act, may after this Act takes effect be prosecuted under the relevant provisions of this Act. 15

(b) Despite the retrospective application of this Act as contemplated in paragraph (a), any penalty imposed in terms of this Act in respect of an act or omission which took place before this Act came into operation may not exceed the maximum penalty which could have been imposed on the date when the Act or omission took place. 20

(6) All disciplinary proceedings which immediately before the commencement of this Act were underway or pending must be concluded as if this Act had not been passed.

(7) All appeal processes which immediately before the commencement of this Act were underway or pending must proceed as if this Act had not been passed. 25

**Amendment and repeal of laws**

**166.** (1) The laws mentioned in Schedule 1 are hereby amended to the extent set out in the third column of that Schedule.

(2) The laws specified in Schedule 2 are hereby repealed to the extent set out in the third column of that Schedule. 30

**Act binding on State**

**167.** This Act binds the State.

**Short title and commencement**

**168.** (1) This Act is called the Civil Aviation Act, 2009, and comes into operation on a date to be fixed by the President by Proclamation in the *Gazette*. 35

(2) Different dates may in terms of subsection (1) be fixed in respect of different provisions of this Act.

## SCHEDULE 1

## LAWS AMENDED

## (Section 166(1))

No. and Year of Act	Short Title	Extent of amendment	5
Act 115 of 1990	Air Services Licensing Act, 1990	<p>1. The amendment of section 1 by—</p> <p>(a) the deletion of the definition of “<b>Au- thority</b>”;</p> <p>(b) the substitution for the definition of “<b>authorised officer</b>” of the following definition: “<b>‘authorised officer’</b> means an authorized officer as defined in sec- tion 1 of the [<b>Aviation Act, 1962</b> (<b>Act No 74 of 1962</b>)] <u>Civil Aviation Act, 2008;</u>”;</p> <p>(c) the substitution for the definition of “<b>authorised person</b>” of the following definition: “<b>‘authorised person’</b> means an authorised person as defined in sec- tion 1 of the [<b>Aviation Act, 1962</b>] <u>Civil Aviation Act, 2008;</u>”;</p> <p>(d) the deletion of the definition of “<b>Chief Executive Officer</b>”;</p> <p>(e) the insertion after the definition of “<b>authorised person</b>” of the following definition: “<b>‘Civil Aviation Authority’</b> means <u>the South African Civil Aviation Authority as defined in section 1 of the Civil Aviation Act, 2008;</u>”;</p> <p>(f) the deletion of the definition of “<b>Com- missioner for Civil Aviation</b>”;</p> <p>(g) the insertion after the definition of “<b>de- partment</b>” of the following definition: “<b>‘Director’</b> means the Director for <u>Civil Aviation as defined in section 1 of the Civil Aviation Act, 2008;</u>”;</p> <p>(h) the substitution for the definition of “inspector” of the following definition: “<b>‘inspector’</b> means an inspector as defined in section 1 of the [<b>Aviation Act, 1962 (Act No. 74 of 1962)</b>] <u>Civil Aviation Act, 2008.</u>”</p> <p>2. (a) The substitution for the word “<b>Au- thority</b>”, wherever it occurs in the Act, of the words “<b>Civil Aviation Authority</b>”;</p> <p>(b) the substitution for the words “<b>Chief Executive Officer</b>”, wherever they occur in the Act, of the word “<b>Director</b>”; and</p> <p>(c) the substitution for the words “<b>Commis- sioner of Civil Aviation</b>”, wherever they occur in the Act, of the word “<b>Director</b>”.</p>	<p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p> <p>45</p> <p>50</p> <p>55</p>

No. and Year of Act	Short Title	Extent of amendment	
Act 41 of 1998	South African Civil Aviation Authority Levies Act, 1998	<p>1. The amendment of section 1 by—</p> <p>(a) the deletion of the definition of “<b>Authority</b>”;</p> <p>(b) the insertion before the definition of “levy” of the following definition:  “<b>Civil Aviation Authority</b> means the South African Civil Aviation Authority as defined in section 1 of the Civil Aviation Act, 2008;” and</p> <p>(c) the substitution for the words preceding paragraph (a) of the definition of “levy” of the following words:  “<b>levy</b> means an amount payable at intervals or at specified times by participants in civil aviation, as defined in section 1 of the [South African Civil Aviation Authority Act, 1998] Civil Aviation Act, 2008, on one or more or all of the following criteria, namely—”.</p> <p>2. The substitution for the word “<b>Authority</b>”, wherever it appears in the Act, of the words “<b>Civil Aviation Authority</b>”.</p>	5 10 15 20 25
Act 59 of 1993	Convention on The International Recognition of Rights In Aircraft Act, 1993	<p>1. The amendment of section 1 by—</p> <p>(a) the deletion of the definition of “<b>Commissioner for Civil Aviation</b>”; and</p> <p>(b) the insertion after the definition of “<b>Convention</b>” of the following definition:  “<b>Director</b> means the Director for Civil Aviation as defined in section 1 of the Civil Aviation Act, 2008;”.</p> <p>2. The substitution for the words “<b>Commissioner of Civil Aviation</b>”, wherever they occur in the Act, of the word “<b>Director</b>”.</p>	30 35 40

Act No. 13, 2009

CIVIL AVIATION ACT, 2009

No. and Year of Act	Short Title	Extent of amendment
Act 60 of 1993	International Air Services Act, 1993	<p>1. The Amendment of section 1 by—</p> <p>(a) the substitution for the definition of <b>“authorised officer”</b> of the following definition: 5</p> <p style="padding-left: 40px;"><b>“ ‘authorised officer’</b> means an authorized officer as defined in section 1 of the [<b>Aviation Act, 1962 (Act No 74 of 1962)</b>] <u>Civil Aviation Act, 2008;</u>” 10</p> <p>(b) the substitution for the definition of <b>“authorised person”</b> of the following definition: 15</p> <p style="padding-left: 40px;"><b>“ ‘authorised person’</b> means an authorized person as defined in section 1 of the [<b>Aviation Act, 1962</b>] <u>Civil Aviation Act, 2008;</u>” 20</p> <p>(c) the deletion of the definition of <b>“Commissioner for Civil Aviation”</b>: 20</p> <p>(d) the insertion after the definition of <b>“council”</b> of the following definition: 25</p> <p style="padding-left: 40px;"><b>“ ‘Director’</b> means the Director for <u>Civil Aviation as defined in section 1 of the Civil Aviation Act, 2008;</u>” 25</p> <p>(e) the substitution for the definition of <b>“inspector”</b> of the following definition: 30</p> <p style="padding-left: 40px;"><b>“ ‘inspector’</b> means an inspector as defined in section 1 of the [<b>Aviation Act, 1962 (Act No. 74 of 1962)</b>] <u>Civil Aviation Act, 2008.</u> 30</p> <p>2. The substitution for the words <b>“Commissioner of Civil Aviation”</b>, wherever they occur in the Act, of the word <b>“Director”</b>. 35</p>

**SCHEDULE 2****LAWS REPEALED****(Section 166(2))**

No. and year of Law	Short Title	Extent	5
Act 74 of 1962	Aviation Act, 1962	The whole	
Act 10 of 1972	Civil Aviation Offences Act, 1972	The whole	
Act 40 of 1998	South African Civil Aviation Authority Act, 1998	The whole	10

**SCHEDULE 3****CONVENTION ON INTERNATIONAL CIVIL AVIATION (articles 1-96)****PREAMBLE**

**WHEREAS** the future development of international civil aviation can greatly help to create and preserve friendship and understanding among the nations and peoples of the world, yet its abuse can become a threat to the general security; and 5

**WHEREAS** it is desirable to avoid friction and to promote that co-operation between nations and peoples upon which the peace of the world depends;

**THEREFORE** the undersigned governments having agreed on certain principles and arrangements in order that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically; 10

Have accordingly concluded this Convention to that end.

**PART I****AIR NAVIGATION (articles 1-42) 15****CHAPTER I****GENERAL PRINCIPLES AND APPLICATION OF THE CONVENTION (articles 1-4)****Article 1**

**Sovereignty**—The contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory. 20

**Article 2**

**Territory**—For the purposes of this Convention the territory of a State shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State. 25

**Article 3**

**Civil and state aircraft—**

- (a) This Convention shall be applicable only to civil aircraft, and shall not be applicable to state aircraft.
- (b) Aircraft used in military, customs and police services shall be deemed to be state aircraft. 30
- (c) No state aircraft of a contracting State shall fly over the territory of another State or land thereon without authorization by special agreement or otherwise, and in accordance with the terms thereof.
- (d) The contracting States undertake, when issuing regulations for their state aircraft, that they will have due regard for the safety of navigation of civil aircraft. 35

**Article 3bis**

- (a) The contracting States recognize that every State must refrain from resorting to the use of weapons against civil aircraft in flight and that, in case of interception, the lives of persons on board and the safety of aircraft must not be endangered. This provision shall not be interpreted as modifying in any way the rights and obligations of States set forth in the Charter of the United Nations. 40
- (b) The contracting States recognize that every State, in the exercise of its sovereignty, is entitled to require the landing at some designated airport of a civil aircraft flying above its territory without authority or if there are 45



reasonable grounds to conclude that it is being used for any purpose inconsistent with the aims of this Convention; it may also give such aircraft any other instructions to put an end to such violations. For this purpose, the contracting States may resort to any appropriate means consistent with relevant rules of international law, including the relevant provision of this Convention, specifically paragraph (a) of this Article. Each contracting State agrees to publish its regulations in force regarding the interception of civil aircraft. 5

(c) Every civil aircraft shall comply with an order given in conformity with paragraph (b) of this Article. To this end each contracting State shall establish all necessary provisions in its national laws or regulations to make such compliance mandatory for any civil aircraft registered in that State or operated by an operator who has his principal place of business or permanent residence in that State. Each contracting State shall make any violation of such applicable laws or regulations punishable by severe penalties and shall submit the case to its competent authorities in accordance with its laws or regulations. 10 15

(d) Each contracting State shall take appropriate measures to prohibit the deliberate use of any civil aircraft registered in that State or operated by an operator who has his principal place of business or permanent residence in that State for any purpose inconsistent with the aims of this Convention. This provision shall not affect paragraph (a) or derogate from paragraphs (b) and (c) of this Article. 20

#### Article 4

**Misuse of civil aviation**—Each contracting State agrees not to use civil aviation for any purpose inconsistent with the aims of this Convention. 25

### CHAPTER II

#### FLIGHT OVER TERRITORY OF CONTRACTING STATES (articles 5-16)

#### Article 5

**Right of non-scheduled flight**—Each contracting State agrees that all aircraft of the other contracting States, being aircraft not engaged in scheduled international air services shall have the right, subject to the observance of the terms of this Convention, to make flights into or in transit non-stop across its territory and to make stops for non-traffic purposes without the necessity of obtaining prior permission, and subject to the right of the State flown over to require landing. Each contracting State nevertheless reserves the right, for reasons of safety of flight, to require aircraft desiring to proceed over regions which are inaccessible or without adequate air navigation facilities to follow prescribed routes, or to obtain special permission for such flights. 30 35

Such aircraft, if engaged in the carriage of passengers, cargo, or mail for remuneration or hire on other than scheduled international air services, shall also, subject to the provisions of Article 7, have the privilege of taking on or discharging passengers, cargo, or mail, subject to the right of any State where such embarkation or discharge takes place to impose such regulations, conditions or limitations as it may consider desirable. 40

#### Article 6

**Scheduled air services**—No scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization. 45

**Article 7**

**Sabotage**—Each contracting State shall have the right to refuse permission to the aircraft of other contracting States to take on in its territory passengers, mail and cargo carried for remuneration or hire and destined for another point within its territory. Each contracting State undertakes not to enter into any arrangements which specifically grant any such privilege on an exclusive basis to any other State or an airline of any other State, and not to obtain any such exclusive privilege from any other State. 5

**Article 8**

**Pilotless aircraft**—No aircraft capable of being flown without a pilot shall be flown without a pilot over the territory of a contracting State without special authorization by that State and in accordance with the terms of such authorization. Each contracting State undertakes to insure that the flight of such aircraft without a pilot in regions open to civil aircraft shall be so controlled as to obviate danger to civil aircraft. 10

**Article 9**

**Prohibited areas**— 15

- (a) Each contracting State may, for reasons of military necessity or public safety, restrict or prohibit uniformly the aircraft of other States from flying over certain areas of its territory, provided that no distinction in this respect is made between the aircraft of the State whose territory is involved, engaged in international scheduled airline services, and the aircraft of the other contracting States likewise engaged. Such prohibited areas shall be of reasonable extent and location so as not to interfere unnecessarily with air navigation. Descriptions of such prohibited areas in the territory of a contracting State, as well as any subsequent alterations therein, shall be communicated as soon as possible to the other contracting States and to the International Civil Aviation Organization. 20
- (b) Each contracting State reserves also the right, in exceptional circumstances or during a period of emergency, or in the interest of public safety, and with immediate effect, temporarily to restrict or prohibit flying over the whole or any part of its territory, on condition that such restriction or prohibition shall be applicable without distinction of nationality to aircraft of all other States. 30
- (c) Each contracting State, under such regulations as it may prescribe, may require any aircraft entering the areas contemplated in subparagraph (a) or (b) above to effect a landing as soon as practicable thereafter at some designated airport within its territory. 35

**Article 10**

**Landing at customs airport**—Except in a case where, under the terms of this Convention or a special authorization, aircraft are permitted to cross the territory of a contracting State without landing, every aircraft which enters the territory of a contracting State shall, if the regulations of that State so require, land at an airport designated by that State for the purpose of customs and other examination. On departure from the territory of a contracting State, such aircraft shall depart from a similarly designated customs airport. Particulars of all designated customs airports shall be published by the State and transmitted to the International Civil Aviation Organization established under Part II of this Convention for communication to all other contracting States. 40 45

**Article 11**

**Applicability of air regulations**—Subject to the provisions of this Convention, the laws and regulations of a contracting State relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of all 50

contracting States without distinction as to nationality, and shall be complied with by such aircraft upon entering or departing from or while within the territory of that State.

#### Article 12

**Rules of the air**—Each contracting State undertakes to adopt measures to insure that every aircraft flying over or manoeuvring within its territory and that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the rules and regulations relating to the flight and manoeuvre of aircraft there in force. Each contracting State undertakes to keep its own regulations in these respects uniform, to the greatest possible extent, with those established from time to time under this Convention. Over the high seas, the rules in force shall be those established under this Convention. Each contracting State undertakes to insure the prosecution of all persons violating the regulations applicable.

#### Article 13

**Entry and clearance regulations**—The laws and regulations of a contracting State as to the admission to or departure from its territory of passengers, crew or cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs, and quarantine shall be complied with by or on behalf of such passengers, crew or cargo upon entrance into or departure from, or while within the territory of that State.

#### Article 14

**Prevention of spread of disease**—Each contracting State agrees to take effective measures to prevent the spread by means of air navigation of cholera, typhus (*epidemic*), smallpox, yellow fever, plague, and such other communicable diseases as the contracting State shall from time to time decide to designate, and to that end contracting States will keep in close consultation with the agencies concerned with international regulations relating to sanitary measures applicable to aircraft. Such consultation shall be without prejudice to the application of any existing international convention on this subject to which the contracting States may be parties.

#### Article 15

**Airport and similar charges**—Every airport in a contracting State which is open to public use by its national aircraft shall likewise, subject to the provisions of Article 68, be open under uniform conditions to the aircraft of all the other contracting States. The like uniform conditions shall apply to the use, by aircraft of every contracting State, of all air navigation facilities, including radio and meteorological services, which may be provided for public use for the safety and expedition of air navigation.

Any charges that may be imposed or permitted to be imposed by a contracting State for the use of such airports and air navigation facilities by the aircraft of any other contracting State shall not be higher,—

- (a) as to aircraft not engaged in scheduled international air services, than those that would be paid by its national aircraft of the same class engaged in similar operations, and
- (b) as to aircraft engaged in scheduled international air services, than those that would be paid by its national aircraft engaged in similar international air services.

All such charges shall be published and communicated to the International Civil Aviation Organization: Provided that, upon representation by an interested contracting State, the charges imposed for the use of airports and other facilities shall be subject to review by the Council, which shall report and make recommendations thereon for the consideration of the State or States concerned. No fees, dues or other charges shall be imposed by any contracting State in respect solely of the right of transit over or entry into or exit from its territory of any aircraft of a contracting State or persons or property thereon.

**Article 16**

**Search of aircraft**—The appropriate authorities of each of the contracting States shall have the right, without unreasonable delay, to search aircraft of the other contracting States on landing or departure, and to inspect the certificates and other documents prescribed by this Convention.

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**CHAPTER III****NATIONALITY OF AIRCRAFT (articles 17-21)****Article 17**

**Nationality of aircraft**—Aircraft have the nationality of the State in which they are registered.

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**Article 18**

**Dual registration**—An aircraft cannot be validly registered in more than one State, but its registration may be changed from one State to another.

**Article 19**

**National laws governing registration**—The registration or transfer of registration of aircraft in any contracting State shall be made in accordance with its laws and regulations.

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**Article 20**

**Display of marks**—Every aircraft engaged in international air navigation shall bear its appropriate nationality and registration marks.

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**Article 21**

**Report of registrations**—Each contracting State undertakes to supply to any other contracting State or to the International Civil Aviation Organization, on demand, information concerning the registration and ownership of any particular aircraft registered in that State. In addition, each contracting State shall furnish reports to the International Civil Aviation Organization, under such regulations as the latter may prescribe, giving such pertinent data as can be made available concerning the ownership and control of aircraft registered in that State and habitually engaged in international air navigation. The data thus obtained by the International Civil Aviation Organization shall be made available by it on request to the other contracting States.

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**CHAPTER IV****MEASURES TO FACILITATE AIR NAVIGATION (articles 22-28)****Article 22**

**Facilitation of formalities**—Each contracting State agrees to adopt all practicable measures, through the issuance of special regulations or otherwise, to facilitate and expedite navigation by aircraft between the territories of contracting States, and to prevent unnecessary delays to aircraft, crews, passengers and cargo, especially in the administration of the laws relating to immigration, quarantine, customs and clearance.

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**Article 23**

**Customs and immigration procedures**—Each contracting State undertakes, so far as it may find practicable, to establish customs and immigration procedures affecting international air navigation in accordance with the practices which may be established or recommended from time to time, pursuant to this Convention. Nothing in this Convention shall be construed as preventing the establishment of customs-free airports.

40

**Article 24****Customs duty—**

- (a) Aircraft on a flight to, from, or across the territory of another contracting State shall be admitted temporarily free of duty, subject to the customs regulations of the State. Fuel, lubricating oils, spare parts, regular equipment and aircraft stores on board an aircraft of a contracting State, on arrival in the territory of another contracting State and retained on board on leaving the territory of that State shall be exempt from customs duty, inspection fees or similar national or local duties and charges. This exemption shall not apply to any quantities or articles unloaded, except in accordance with the customs regulations of the State, which may require that they shall be kept under customs supervision. 5 10
- (b) Spare parts and equipment imported into the territory of a contracting State for incorporation in or use on an aircraft of another contracting State engaged in international air navigation shall be admitted free of customs duty, subject to compliance with the regulations of the State concerned, which may provide that the articles shall be kept under customs supervision and control. 15

**Article 25**

**Aircraft in distress—**Each contracting State undertakes to provide such measures of assistance to aircraft in distress in its territory as it may find practicable, and to permit, subject to control by its own authorities, the owners of the aircraft or authorities of the State in which the aircraft is registered to provide such measures of assistance as may be necessitated by the circumstances. Each contracting State, when undertaking search for missing aircraft, will collaborate in co-ordinated measures which may be recommended from time to time pursuant to this Convention. 20

**Article 26**

**Investigation of accidents—**In the event of an accident to an aircraft of a contracting State occurring in the territory of another contracting State, and involving death or serious injury, or indicating serious technical defect in the aircraft or air navigation facilities, the State in which the accident occurs will institute an inquiry into the circumstances of the accident, in accordance, so far as its laws permit, with the procedure which may be recommended by the International Civil Aviation Organization. The State in which the aircraft is registered shall be given the opportunity to appoint observers to be present at the inquiry and the State holding the inquiry shall communicate the report and findings in the matter to that State. 25 30

**Article 27****Exemption from seizure on patent claims—**

- (a) While engaged in international air navigation, any authorized entry of aircraft of a contracting State into the territory of another contracting State or authorized transit across the territory of such State with or without landings shall not entail any seizure or detention of the aircraft or any claim against the owner or operator thereof or any other interference therewith by or on behalf of such State or any person therein, on the ground that the construction, mechanism, parts, accessories or operation of the aircraft is an infringement of any patent, design, or model duly granted or registered in the State whose territory is entered by the aircraft, it being agreed that no deposit of security in connection with the foregoing exemption from seizure or detention of the aircraft shall in any case be required in the State entered by such aircraft. 35 40 45
- (b) The provisions of paragraph (a) of this Article shall also be applicable to the storage of spare parts and spare equipment for the aircraft and the right to use and install the same in the repair of an aircraft of a contracting State in the territory of any other contracting State, provided that any patented part or 50

equipment so stored shall not be sold or distributed internally in or exported commercially from the contracting State entered by the aircraft.

- (c) The benefits of this Article shall apply only to such States, parties to this Convention, as either (1) are parties to the International Convention for the Protection of Industrial Property and to any amendments thereof; or (2) have enacted patent laws which recognize and give adequate protection to inventions made by the nationals of the other States parties to this Convention. 5

#### Article 28

##### **Air navigation facilities and standard systems**

Each contracting State undertakes, so far as it may find practicable, to— 10

- (a) provide, in its territory, airports, radio services, meteorological services and other air navigation facilities to facilitate international air navigation, in accordance with the standards and practices recommended or established from time to time, pursuant to this Convention; 15
- (b) adopt and put into operation the appropriate standard systems of communications procedure, codes, markings, signals, lighting and other operational practices and rules which may be recommended or established from time to time, pursuant to this Convention; 15
- (c) collaborate in international measures to secure the publication of aeronautical maps and charts in accordance with standards which may be recommended or established from time to time, pursuant to this Convention. 20

### CHAPTER V

#### **CONDITIONS TO BE FULFILLED WITH RESPECT TO AIRCRAFT (articles 29-36)**

#### Article 29

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##### **Documents carried in aircraft**

Every aircraft of a contracting State, engaged in international navigation, shall carry the following documents in conformity with the conditions prescribed in this Convention—

- (a) its certificate of registration; 30
- (b) its certificate of airworthiness; 30
- (c) the appropriate licences for each member of the crew;
- (d) its journey log book;
- (e) if it is equipped with radio apparatus, the aircraft radio station licence; 35
- (f) if it carries passengers, a list of their names and places of embarkation and destination; 35
- (g) if it carries cargo, a manifest and detailed declarations of the cargo.

#### Article 30

##### **Aircraft radio equipment**

- (a) Aircraft of each contracting State may, in or over the territory of other contracting States, carry radio transmitting apparatus only if a licence to install and operate such apparatus has been issued by the appropriate authorities of the State in which the aircraft is registered. The use of radio transmitting apparatus in the territory of the contracting State whose territory is flown over shall be in accordance with the regulations prescribed by that State. 40 45
- (b) Radio transmitting apparatus may be used only by members of the flight crew who are provided with a special licence for the purpose, issued by the appropriate authorities of the State in which the aircraft is registered.

#### Article 31

##### **Certificates of airworthiness**

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Every aircraft engaged in international navigation shall be provided with a certificate of airworthiness issued or rendered valid by the State in which it is registered.

**Article 32****Licences of personnel**

- (a) The pilot of every aircraft and the other members of the operating crew of every aircraft engaged in international navigation shall be provided with certificates of competency and licences issued or rendered valid by the State in which the aircraft is registered. 5
- (b) Each contracting State reserves the right to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licences granted to any of its nationals by another contracting State.

**Article 33**

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**Recognition of certificates and licences**

Certificates of airworthiness and certificates of competency and licences issued or rendered valid by the contracting State in which the aircraft is registered, shall be recognized as valid by the other contracting States, provided that the requirements under which such certificates or licences were issued or rendered valid are equal to or above the minimum standards which may be established from time to time pursuant to this Convention. 15

**Article 34****Journey log books**

There shall be maintained in respect of every aircraft engaged in international navigation a journey log book in which shall be entered particulars of the aircraft, its crew and of each journey, in such form as may be prescribed from time to time pursuant to this Convention. 20

**Article 35****Cargo restrictions**

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- (a) No munitions of war or implements of war may be carried in or above the territory of a State in aircraft engaged in international navigation, except by permission of such State. Each State shall determine by regulations what constitutes munitions of war or implements of war for the purposes of this Article, giving due consideration, for the purposes of uniformity, to such recommendations as the International Civil Aviation Organization may from time to time make. 30
- (b) Each contracting State reserves the right, for reasons of public order and safety, to regulate or prohibit the carriage in or above its territory of articles other than those enumerated in paragraph (a): Provided that no distinction is made in this respect between its national aircraft engaged in international navigation and the aircraft of the other States so engaged; and provided further that no restriction shall be imposed which may interfere with the carriage and use on aircraft of apparatus necessary for the operation or navigation of the aircraft or the safety of the personnel or passengers. 35 40

**Article 36****Photographic apparatus**

Each contracting State may prohibit or regulate the use of photographic apparatus in aircraft over its territory.

## CHAPTER VI

INTERNATIONAL STANDARDS AND RECOMMENDED PRACTICES  
(articles 37-42)

## Article 37

**Adoption of international standards and procedures**

- Each contracting State undertakes to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation.
- To this end the International Civil Aviation Organization shall adopt and amend from time to time, as may be necessary, international standards and recommended practices and procedures dealing with—
- (a) communications systems and air navigation aids, including ground marking;
  - (b) characteristics of airports and landing areas;
  - (c) rules of the air and air traffic control practices;
  - (d) licensing of operating and mechanical personnel;
  - (e) airworthiness of aircraft;
  - (f) registration and identification of aircraft;
  - (g) collection and exchange of meteorological information;
  - (h) log books;
  - (i) aeronautical maps and charts;
  - (j) customs and immigration procedures;
  - (k) aircraft in distress and investigation of accidents;
- and such other matters concerned with the safety, regularity, and efficiency of air navigation as may from time to time appear appropriate.

## Article 38

**Departures from international standards and procedures**

- Any State which finds it impracticable to comply in all respects with any such international standard or procedure, or to bring its own regulations or practices into full accord with any international standard or procedure after amendment of the latter, or which deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, shall give immediate notification to the International Civil Aviation Organization of the differences between its own practice and that established by the international standard. In the case of amendments to international standards, any State which does not make the appropriate amendments to its own regulations or practices shall give notice to the Council within sixty days of the adoption of the amendment to the international standard, or indicate the action which it proposes to take. In any such case, the Council shall make immediate notification to all other states of the difference which exists between one or more features of an international standard and the corresponding national practice of that State.

## Article 39

**Endorsement of certificates and licences**

- (a) Any aircraft or part thereof with respect to which there exists an international standard of airworthiness or performance, and which failed in any respect to satisfy that standard at the time of its certification, shall have endorsed on or attached to its airworthiness certificate a complete enumeration of the details in respect of which it so failed.
- (b) Any person holding a licence who does not satisfy in full the conditions laid down in the international standard relating to the class of licence or certificate which he holds shall have endorsed on or attached to his licence a complete enumeration of the particulars in which he does not satisfy such conditions.



**Article 40****Validity of endorsed certificates and licences**

No aircraft or personnel having certificates or licences so endorsed shall participate in international navigation, except with the permission of the State or States whose territory is entered. The registration or use of any such aircraft, or of any certificated aircraft part, in any State other than that in which it was originally certificated shall be at the discretion of the State into which the aircraft or part is imported. 5

**Article 41****Recognition of existing standards of airworthiness**

The provisions of this Chapter shall not apply to aircraft and aircraft equipment of types of which the prototype is submitted to the appropriate national authorities for certification prior to a date three years after the date of adoption of an international standard of airworthiness for such equipment. 10

**Article 42****Recognition of existing standards of competency of personnel** 15

The provisions of this Chapter shall not apply to personnel whose licences are originally issued prior to a date one year after initial adoption of an international standard of qualification for such personnel; but they shall in any case apply to all personnel whose licences remain valid five years after the date of adoption of such standard.

**PART II** 20**THE INTERNATIONAL CIVIL AVIATION ORGANIZATION (articles 43-66)****CHAPTER VII****THE ORGANIZATION (articles 43-47)****Article 43****Name and composition** 25

An organization to be named the International Civil Aviation Organization is formed by the Convention. It is made up of an Assembly, a Council, and such other bodies as may be necessary.

**Article 44****Objectives** 30

The aims and objectives of the Organization are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to—

- (a) insure the safe and orderly growth of international civil aviation throughout the world; 35
- (b) encourage the arts of aircraft design and operation for peaceful purposes;
- (c) encourage the development of airways, airports, and air navigation facilities for international civil aviation;
- (d) meet the needs of the peoples of the world for safe, regular, efficient and economical air transport; 40
- (e) prevent economic waste caused by unreasonable competition;
- (f) insure that the rights of contracting States are fully respected and that every contracting State has a fair opportunity to operate international airlines;
- (g) avoid discrimination between contracting States;
- (h) promote safety of flight in international air navigation; 45
- (i) promote generally the development of all aspects of international civil aeronautics.

**Article 45****Permanent seat**

The permanent seat of the Organization shall be at such place as shall be determined at the final meeting of the Interim Assembly of the Provisional International Civil Aviation Organization set up by the Interim Agreement on International Civil Aviation signed at Chicago on December 7, 1944. The seat may be temporarily transferred elsewhere by decision of the Council, and otherwise than temporarily by decision of the Assembly, such decision to be taken by the number of votes specified by the Assembly. The number of votes so specified will not be less than three-fifths of the total number of contracting States.

**Article 46****First meeting of Assembly**

The first meeting of the Assembly shall be summoned by the Interim Council of the above-mentioned Provisional Organization as soon as the Convention has come into force, to meet at a time and place to be decided by the Interim Council.

**Article 47****Legal capacity**

The Organization shall enjoy in the territory of each contracting State such legal capacity as may be necessary for the performance of its functions. Full juridical personality shall be granted wherever compatible with the constitution and laws of the State concerned.

**CHAPTER VIII****THE ASSEMBLY (articles 48-49)****Article 48****Meetings of Assembly and voting** 25

- (a) The assembly shall meet not less than once in three years and shall be convened by the Council at a suitable time and place. Extraordinary meetings of the Assembly may be held at any time upon the call of the Council or at the request of any ten contracting States addressed to the Secretary General.
- (b) All contracting States shall have an equal right to be represented at the meetings of the Assembly and each contracting State shall be entitled to one vote. Delegates representing contracting States may be assisted by technical advisers who may participate in the meetings but shall have no vote.
- (c) A majority of the contracting States is required to constitute a quorum for the meetings of the Assembly. Unless otherwise provided in this Convention, decisions of the Assembly shall be taken by a majority of the votes cast.

**Article 49****Powers and duties of Assembly**

The powers and duties of the Assembly shall be to—

- (a) elect at each meeting its President and other officers; 40
- (b) elect the contracting States to be represented on the Council, in accordance with the provisions of Chapter IX;
- (c) examine and take appropriate action on the reports of the Council and decide on any matter referred to it by the Council;
- (d) determine its own rules of procedure and establish such subsidiary commissions as it may consider to be necessary or desirable; 45
- (e) vote annual budgets and determine the financial arrangements of the Organization, in accordance with the provisions of Chapter XII;
- (f) review expenditures and approve the accounts of the Organization;
- (g) refer, at its discretion, to the Council, to subsidiary commissions, or to any other body any matter within its sphere of action; 50

- (h) delegate to the Council the powers and authority necessary or desirable for the discharge of the duties of the Organization and revoke or modify the delegations of authority at any time;
- (i) carry out the appropriate provisions of Chapter XIII;
- (j) consider proposals for the modification or amendment of the provisions of this Convention and, if it approves of the proposals, recommend them to the contracting States in accordance with the provisions of Chapter XXI;
- (k) deal with any matter within the sphere of action of the Organization not specifically assigned to the Council.

## CHAPTER IX

### THE COUNCIL (articles 50-55)

#### Article 50

##### Composition and election of Council

- (a) The Council shall be a permanent body responsible to the Assembly. It shall be composed of 33 contracting States elected by the Assembly. An election shall be held at the first meeting of the Assembly and thereafter every three years, and the members of the Council so elected shall hold office until the following election.
- (b) In electing the members of the Council, the Assembly shall give adequate representation to (1) the States of chief importance in air transport; (2) the States not otherwise included which make the largest contribution to the provision of facilities for international civil air navigation; and (3) the States not otherwise included whose designation will insure that all the major geographic areas of the world are represented on the Council. Any vacancy on the Council shall be filled by the Assembly as soon as possible; any contracting State so elected to the Council shall hold office for the unexpired portion of its predecessor's term of office.
- (c) No representative of a contracting State on the Council shall be actively associated with the operation of an international air service or financially interested in such a service.

#### Article 51

##### President of Council

The Council shall elect its President for a term of three years. He may be re-elected. He shall have no vote. The Council shall elect from among its members one or more Vice-Presidents who shall retain their right to vote when serving as acting President. The President need not be selected from among the representatives of the members of the Council but, if a representative is elected his seat shall be deemed vacant and it shall be filled by the State which he represented. The duties of the President shall be to—

- (a) convene meetings of the Council, the Air Transport Committee, and the Air Navigation Commission;
- (b) serve as representative of the Council; and
- (c) carry out on behalf of the Council the functions which the Council assigns to him.

#### Article 52

##### Voting in Council

Decisions by the Council shall require approval by a majority of its members. The Council may delegate authority with respect to any particular matter to a committee of its members. Decisions of any committee of the Council may be appealed to the Council by any interested contracting State.

**Article 53****Participation without a vote**

Any contracting State may participate, without a vote, in the consideration by the Council and by its committees and commissions of any question which especially affects its interests. No member of the Council shall vote in the consideration by the Council of a dispute to which it is a party. 5

**Article 54****Mandatory functions of Council**

The Council shall—

- (a) submit annual reports to the Assembly; 10
- (b) carry out the directions of the Assembly and discharge the duties and obligations which are laid on it by this Convention;
- (c) determine its organization and rules of procedure;
- (d) appoint and define the duties of an Air Transport Committee, which shall be chosen from among the representatives of the members of the Council, and which shall be responsible to it; 15
- (e) establish an Air Navigation Commission, in accordance with the provisions of Chapter X;
- (f) administer the finances of the Organization in accordance with the provisions of Chapters XII and XV; 20
- (g) determine the emoluments of the President of the Council;
- (h) appoint a chief executive officer who shall be called the Secretary General, and make provision for the appointment of such other personnel as may be necessary, in accordance with the provisions of Chapter XI;
- (i) request, collect, examine and publish information relating to the advancement of air navigation and the operation of international air services, including information about the costs of operation and particulars of subsidies paid to airlines from public funds; 25
- (j) report to contracting States any infraction of this Convention, as well as any failure to carry out recommendations or determinations of the Council; 30
- (k) report to the Assembly any infraction of this Convention where a contracting State has failed to take appropriate action within a reasonable time after notice of the infraction;
- (l) adopt, in accordance with the provisions of Chapter VI of this Convention, international standards and recommended practices; for convenience, designate them as Annexes to this Convention; and notify all contracting States of the action taken; 35
- (m) consider recommendations of the Air Navigation Commission for amendment of the Annexes and take action in accordance with the provisions of Chapter XX; 40
- (n) consider any matter relating to the Convention which any contracting State refers to it.

**Article 55****Permissive function of Council**

The Council may—

- (a) where appropriate and as experience may show to be desirable create subordinate air transport commissions on a regional or other basis and define groups of states or airlines with or through which it may deal to facilitate the carrying out of the aims of this Convention; 45
- (b) delegate to the Air Navigation Commission duties additional to those set forth in the Convention and revoke or modify such delegations of authority at any time; 50
- (c) conduct research into all aspects of air transport and air navigation which are of international importance, communicate the results of its research to the contracting States, and facilitate the exchange of information between contracting States on air transport and air navigation matters; 55

- (d) study any matters affecting the organization and operation of international air transport, including the international ownership and operation of international air services on trunk routes, and submit to the Assembly plans in relation thereto;
- (e) investigate, at the request of any contracting State, any situation which may appear to present avoidable obstacles to the development of international air navigation; and, after such investigation, issue such reports as may appear to it desirable. 5

## CHAPTER X

### THE AIR NAVIGATION COMMISSION (articles 56-57) 10

#### Article 56

##### **Nomination and appointment of Commission**

The Air Navigation Commission shall be composed of nineteen members appointed by the Council from among persons nominated by contracting States. These persons shall have suitable qualifications and experience in the science and practice of aeronautics. 15  
The Council shall request all contracting States to submit nominations. The President of the Air Navigation Commission shall be appointed by the Council.

#### Article 57

##### **Duties of Commission**

The Air Navigation Commission shall: 20

(a) consider, and recommend to the Council for adoption, modifications of the Annexes to this Convention;

(b) establish technical sub-commissions on which any contracting State may be represented, if it so desires;

(c) advise the Council concerning the collection and communication to the contracting States of all information which it considers necessary and useful for the advancement of air navigation. 25

## CHAPTER XI

### PERSONNEL (articles 58-60)

#### Article 58 30

##### **Appointment of personnel**

Subject to any rules laid down by the Assembly and to the provisions of this Convention, the Council shall determine the method of appointment and of termination of appointment, the training, and the salaries, allowances, and conditions of service of the Secretary General and other personnel of the Organization, and may employ or make use of the services of nationals of any contracting State. 35

#### Article 59

##### **International character of personnel**

The President of the Council, the Secretary General, and other personnel shall not seek or receive instructions in regard to the discharge of their responsibilities from any authority external to the Organization. Each contracting State undertakes fully to respect the international character of the responsibilities of the personnel and not to seek to influence any of its nationals in the discharge of their responsibilities. 40

#### Article 60

##### **Immunities and privileges of personnel 45**

Each contracting State undertakes, so far as possible under its constitutional procedure, to accord to the President of the Council, the Secretary General, and the other personnel of the Organization, the immunities and privileges which are accorded to corresponding personnel of other public international organizations. If a general international

agreement on the immunities and privileges of international civil servants is arrived at, the immunities and privileges accorded to the President, the Secretary General, and the other personnel of the Organization shall be the immunities and privileges accorded under that general international agreement.

## CHAPTER XII 5

### FINANCE (articles 61-63)

#### Article 61

##### **Budget and apportionment of expenses**

The Council shall submit to the Assembly annual budgets, annual statements of accounts and estimates of all receipts and expenditures. The Assembly shall vote the budgets with whatever modification it sees fit to prescribe and, with the exception of assessments under Chapter XV to States consenting thereto, shall apportion the expenses of the Organization among the contracting States on the basis which it shall from time to time determine. 10

#### Article 62 15

##### **Suspension of voting power**

The Assembly may suspend the voting power in the Assembly and in the Council of any contracting State that fails to discharge within a reasonable period its financial obligations to the Organization.

#### Article 63 20

##### **Expenses of delegations and other representatives**

Each contracting State shall bear the expenses of its own delegation to the Assembly and the remuneration, travel, and other expenses of any person whom it appoints to serve on the Council, and of its nominees or representatives on any subsidiary committees or commissions of the Organization. 25

## CHAPTER XIII

### OTHER INTERNATIONAL ARRANGEMENTS (articles 64-66)

#### Article 64

##### **Security arrangements**

The Organization may, with respect to air matters within its competence directly affecting world security, by vote of the Assembly enter into appropriate arrangements with any general organization set up by the nations of the world to preserve peace. 30

#### Article 65

##### **Arrangements with other international bodies**

The Council, on behalf of the Organization, may enter into agreements with other international bodies for the maintenance of common services and for common arrangements concerning personnel and, with the approval of the Assembly, may enter into such other arrangements as may facilitate the work of the Organization. 35

#### Article 66

##### **Functions relating to other agreements 40**

- (a) The Organization shall also carry out the functions placed upon it by the International Air Services Transit Agreement and by the International Air Transport Agreement drawn up at Chicago on December 7, 1944, in accordance with the terms and conditions therein set forth.

- (b) Members of the Assembly and the Council who have not accepted the International Air Services Transit Agreement or the International Air Transport Agreement drawn up at Chicago on December 7, 1944, shall not have the right to vote on any question referred to the Assembly or Council under the provisions of the relevant Agreement. 5

### PART III

#### INTERNATIONAL AIR TRANSPORT (articles 67-79)

##### CHAPTER XIV

##### INFORMATION AND REPORTS (articles 67)

###### Article 67

10

###### File reports with Council

Each contracting State undertakes that its international airlines shall in accordance with requirements laid down by the Council, file with the Council traffic reports, cost statistics and financial statements showing among other things all receipts and the sources thereof. 15

##### CHAPTER XV

#### AIRPORTS AND OTHER AIR NAVIGATION FACILITIES (articles 68-76)

###### Article 68

###### Designation of routes and airports

Each contracting State may, subject to the provisions of this Convention, designate the route to be followed within its territory by any international air service and the airports which any such service may use. 20

###### Article 69

###### Improvement of air navigation facilities

If the Council is of the opinion that the airports or other air navigation facilities, including radio and meteorological services, of a contracting State are not reasonably adequate for the safe, regular, efficient, and economical operation of international air services, present or contemplated, the Council shall consult with the State directly concerned and other States affected, with a view to finding means by which the situation may be remedied, and may make recommendations for that purpose. No contracting State shall be guilty of an infraction of this Convention if it fails to carry out these recommendations. 25  
30

###### Article 70

###### Financing of air navigation facilities

A contracting State, in the circumstances arising under the provisions of Article 69, may conclude an arrangement with the Council for giving effect to such recommendations. The State may elect to bear all of the costs involved in any such arrangement. If the State does not so elect, the Council may agree, at the request of the State, to provide for all or a portion of the costs. 35

###### Article 71

40

###### Provision and maintenance of facilities by Council

If a contracting State so requests, the Council may agree to provide, man, maintain, and administer any or all of the airports and other air navigation facilities, including radio and meteorological services, required in its territory for the safe, regular, efficient and economical operation of the international air services of the other contracting States, and may specify just and reasonable charges for the use of the facilities provided. 45

**Article 72****Acquisition or use of land**

Where land is needed for facilities financed in whole or in part by the Council at the request of a contracting State, that State shall either provide the land itself, retaining title if it wishes, or facilitate the use of the land by the Council on just and reasonable terms and in accordance with the laws of the State concerned. 5

**Article 73****Expenditure and assessment of funds**

Within the limit of the funds which may be made available to it by the Assembly under Chapter XII, the Council may make current expenditures for the purposes of this Chapter from the general funds of the Organization. The Council shall assess the capital funds required for the purposes of this Chapter in previously agreed proportions over a reasonable period of time to the contracting States consenting thereto whose airlines use the facilities. The Council may also assess to States that consent any working funds that are required. 10  
15

**Article 74****Technical assistance and utilization of revenues**

When the Council, at the request of a contracting State, advances funds or provides airports or other facilities in whole or in part, the arrangement may provide, with the consent of that State, for technical assistance in the supervision and operation of the airports and other facilities, and for the payment, from the revenues derived from the operation of the airports and other facilities, of the operating expenses of the airports and the other facilities, and of interest and amortization charges. 20

**Article 75****Taking over of facilities from Council**

A contracting State may at any time discharge any obligation into which it has entered under Article 70, and take over airports and other facilities which the Council has provided in its territory pursuant to the provisions of Articles 71 and 72, by paying to the Council an amount which in the opinion of the Council is reasonable in the circumstances. If the State considers that the amount fixed by the Council is unreasonable it may appeal to the Assembly against the decision of the Council and the Assembly may confirm or amend the decision of the Council. 25  
30

**Article 76****Return of funds**

Funds obtained by the Council through reimbursement under Article 75 and from receipts of interest and amortization payments under Article 74 shall, in the case of advances originally financed by States under Article 73, be returned to the States which were originally assessed in the proportion of their assessments. as determined by the Council. 35



**CHAPTER XVI****JOINT OPERATING ORGANIZATIONS AND POOLED SERVICES (articles 77-79)****Article 77****Joint operating organizations permitted**

5

Nothing in this Convention shall prevent two or more contracting States from constituting joint air transport operating organizations or international operating agencies and from pooling their air services on any routes or in any regions, but such organizations or agencies and such pooled services shall be subject to all the provisions of this Convention, including those relating to the registration of agreements with the Council. The Council shall determine in what manner the provisions of this Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies. 10

**Article 78****Function of Council**

15

The Council may suggest to contracting States concerned that they form joint organizations to operate air services on any routes or in any regions.

**Article 79****Participation in operating organizations**

20

A State may participate in joint operating organizations or in pooling arrangements, either through its government or through an airline company or companies designated by its government. The companies may, at the sole discretion of the State concerned, be state-owned or partly state-owned or privately owned.

**PART IV****FINAL PROVISIONS (articles 80-96)**

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**CHAPTER XVII****OTHER AERONAUTICAL AGREEMENTS AND ARRANGEMENTS (articles 80-83bis)****Article 80****Paris and Habana Conventions**

30

Each contracting State undertakes, immediately upon the coming into force of this Convention, to give notice of denunciation of the Convention relating to the Regulation of Aerial Navigation signed at Paris on October 13, 1919, or the Convention on Commercial Aviation signed at Habana on February 20, 1928, if it is a party to either. As between contracting States, this Convention supersedes the Conventions of Paris and Habana previously referred to. 35

**Article 81****Registration of existing agreements**

All aeronautical agreements which are in existence on the coming into force of this Convention, and which are between a contracting State and any other State or between an airline of a contracting State or the airline of any other State, shall be forthwith registered with the Council. 40

## Article 82

### Abrogation of inconsistent arrangements

The contracting States accept this Convention as abrogating all obligations and understandings between them which are inconsistent with its terms, and undertake not to enter into any such obligations and understandings. A contracting State which, before becoming a member of the Organization has undertaken any obligations toward a non-contracting State or a national of a contracting State or of a non-contracting State inconsistent with the terms of this Convention, shall take immediate steps to procure its release from the obligations. If an airline of any contracting State has entered into any such inconsistent obligations, the State of which it is a national shall use its best efforts to secure their termination forthwith and shall in any event cause them to be terminated as soon as such action can lawfully be taken after the coming into force of this Convention.

## Article 83

### Registration of new arrangements

Subject to the provisions of the preceding Article, any contracting State may make arrangements not inconsistent with the provisions of this Convention. Any such arrangement shall be forthwith registered with the Council, which shall make it public as soon as possible.

## Article 83bis

### Transfer of certain functions and duties

- (a) Notwithstanding the provisions of Articles 12, 30, 31 and 32 (a), when an aircraft registered in a contracting State is operated pursuant to an agreement for the lease, charter or interchange of the aircraft or any similar arrangement by an operator who has his principal place of business or, if he has no such place of business, his permanent residence in another contracting State, the State of registry may, by agreement with such other State, transfer to it all or part of its functions and duties as State of registry in respect of that aircraft under Articles 12, 30, 31 and 32 (a). The State of registry shall be relieved of responsibility in respect of the functions and duties transferred.
- (b) The transfer shall not have effect in respect of other contracting States before either the agreement between States in which it is embodied has been registered with the Council and made public pursuant to Article 83 or the existence and scope of the agreement have been directly communicated to the authorities of the other contracting State or States concerned by a State party to the agreement.
- (c) The provisions of paragraphs (a) and (b) above shall also be applicable to cases covered by Article 77.

## CHAPTER XVIII

### DISPUTES AND DEFAULT (articles 84-88)

## Article 84

### Settlement of disputes

If any disagreement between two or more contracting States relating to the interpretation or application of this Convention and its Annexes cannot be settled by negotiation, it shall, on the application of any State concerned in the disagreement, be decided by the Council. No member of the Council shall vote in the consideration by the Council of any dispute to which it is a party. Any contracting State may, subject to Article 85, appeal from the decision of the Council to an ad hoc arbitral tribunal agreed upon with the other parties to the dispute or to the Permanent Court of International Justice. Any such appeal shall be notified to the Council within sixty days of receipt of notification of the decision of the Council.

**Article 85****Arbitration procedure**

If any contracting State party to a dispute in which the decision of the Council is under appeal has not accepted the Statute of the Permanent Court of International Justice and the contracting States parties to the dispute cannot agree on the choice of the arbitral tribunal, each of the contracting States parties to the dispute shall name a single arbitrator who shall name an umpire. If either contracting State party to the dispute fails to name an arbitrator within a period of three months from the date of the appeal, an arbitrator shall be named on behalf of that State by the President of the Council from a list of qualified and available persons maintained by the Council. If, within thirty days, the arbitrators cannot agree on an umpire, the President of the Council shall designate an umpire from the list previously referred to. The arbitrators and the umpire shall then jointly constitute an arbitral tribunal. Any arbitral tribunal established under this or the preceding Article shall settle its own procedure and give its decisions by majority vote, provided that the Council may determine procedural questions in the event of any delay which in the opinion of the Council is excessive.

**Article 86****Appeals**

Unless the Council decides otherwise, any decision by the Council on whether an international airline is operating in conformity with the provisions of this Convention shall remain in effect unless reversed on appeal. On any other matter, decisions of the Council shall, if appealed from, be suspended until the appeal is decided. The decisions of the Permanent Court of International Justice and of an arbitral tribunal shall be final and binding.

**Article 87****Penalty for non-conformity by airline**

Each contracting State undertakes not to allow the operation of an airline of a contracting State through the airspace above its territory if the Council has decided that the airline concerned is not conforming to a final decision rendered in accordance with the previous Article.

**Article 88****Penalty for non-conformity by State**

The Assembly shall suspend the voting power in the Assembly and in the Council of any contracting State that is found in default under the provisions of this Chapter.

**CHAPTER XIX****WAR (article 89)****Article 89****War and emergency conditions**

In case of war, the provisions of this Convention shall not affect the freedom of action of any of the contracting States affected, whether as belligerents or as neutrals. The same principle shall apply in the case of any contracting State which declares a state of national emergency and notifies the fact to the Council.

**CHAPTER XX****ANNEXES (article 90)****Article 90 Adoption and amendment of Annexes**

(a) The adoption by the Council of the Annexes described in Article 54, subparagraph (1), shall require the vote of two-thirds of the Council at a meeting called for that purpose and shall then be submitted by the Council to each contracting State. Any such Annex or any amendment of an Annex shall

become effective within three months after its submission to the contracting States or at the end of such longer period of time as the Council may prescribe, unless in the meantime a majority of the contracting States register their disapproval with the Council.

- (b) The Council shall immediately notify all contracting States of the coming into force of any Annex or amendment thereto. 5

## CHAPTER XXI

### RATIFICATIONS, ADHERENCES, AMENDMENTS AND DENUNCIATIONS (articles 91-95)

#### Article 91 10

##### Ratification of Convention

- (a) This convention shall be subject to ratification by the signatory States. The instruments of ratification shall be deposited in the archives of the Government of the United States of America, which shall give notice of the date of the deposit to each of the signatory and adhering States. 15
- (b) As soon as this Convention has been ratified or adhered to by twenty-six States it shall come into force between them on the thirtieth day after deposit of the twenty-sixth instrument. It shall come into force for each State ratifying thereafter on the thirtieth day after the deposit of its instrument of ratification.
- (c) It shall be the duty of the Government of the United States of America to notify the government of each of the signatory and adhering States of the date on which this Convention comes into force. 20

#### Article 92

##### Adherence to Convention

- (a) This Convention shall be open for adherence by members of the United Nations and States associated with them, and States which remained neutral during the present world conflict. 25
- (b) Adherence shall be effected by notification addressed to the Government of the United States of America and shall take effect as from the thirtieth day from the receipt of the notification by the Government of the United States of America, which shall notify all the contracting States. 30

#### Article 93

##### Admission of other States

States other than those provided for in Articles 91 and 92 (a) may, subject to approval by any general international organization set up by the nations of the world to preserve peace, be admitted to participation in this Convention by means of a four-fifths vote of the Assembly and on such conditions as the Assembly may prescribe: Provided that in each case the assent of any State invaded or attacked during the present war by the State seeking admission shall be necessary. 35

#### Article 93bis 40

##### Termination or suspension of membership

- (a) Notwithstanding the provisions of Articles 91, 92 and 93 above:
- (1) A State whose government the General Assembly of the United Nations has recommended be debarred from membership in international agencies established by or brought into relationship with the United Nations shall automatically cease to be a member of the International Civil Aviation Organization; 45
- (2) A State which has been expelled from membership in the United Nations shall automatically cease to be a member of the International Civil Aviation Organization unless the General Assembly of the United Nations attaches to its act of expulsion a recommendation to the contrary. 50

- (b) A State which ceases to be a member of the International Civil Aviation Organization as a result of the provisions of paragraph (a) above may, after approval by the General Assembly of the United Nations, be readmitted to the International Civil Aviation Organization upon application and upon approval by a majority of the Council. 5
- (c) Members of the Organization which are suspended from the exercise of the rights and privileges of membership in the United Nations shall, upon the request of the latter, be suspended from the rights and privileges of membership in this Organization.

#### Article 94 10

##### Amendment of Convention

- (a) Any proposed amendment to this Convention must be approved by a two-thirds vote of the Assembly and shall then come into force in respect of States which have ratified such amendment when ratified by the number of contracting States specified by the Assembly. The number so specified shall not be less than two-thirds of the total number of contracting States. 15
- (b) If in its opinion the amendment is of such a nature as to justify this course, the Assembly in its resolution recommending adoption may provide that any State which has not ratified within a specified period after the amendment has come into force shall thereupon cease to be a member of the Organization and a party to the Convention. 20

#### Article 95

##### Denunciation of Convention

- (a) Any contracting State may give notice of denunciation of this Convention three years after its coming into effect by notification addressed to the Government of the United States of America, which shall at once inform each of the contracting States. 25
- (b) Denunciation shall take effect one year from the date of the receipt of the notification and shall operate only as regards the State effecting the denunciation. 30

### CHAPTER XXII

#### DEFINITIONS (article 96)

##### Article 96

For the purpose of this Convention the expression—

- (a) 'Air service' means any scheduled air service performed by aircraft for the public transport of passengers, mail or cargo. 35
- (b) 'International air service' means an air service which passes through the air space over the territory of more than one State.
- (c) 'Airline' means any air transport enterprise offering or operating an international air service. 40
- (d) 'Stop for non-traffic purposes' means a landing for any purpose other than taking on or discharging passengers, cargo or mail.

#### SIGNATURE OF CONVENTION

IN WITNESS WHEREOF, the undersigned plenipotentiaries, having been duly authorized, sign this Convention on behalf of their respective governments on the dates appearing opposite their signatures. 45

DONE at Chicago the seventh day of December, 1944, in the English language. A text drawn up in the English, French and Spanish languages, each of which shall be of equal authenticity, shall be opened for signature at Washington, D.C. Both texts shall be deposited in the archives of the Government of the United States of America, and certified copies shall be transmitted by that Government to the governments of all the States which may sign or adhere to this Convention. 50

**SCHEDULE 4****INTERNATIONAL AIR SERVICES TRANSIT AGREEMENT**

The States which sign and accept this International Air Services Transit Agreement, being members of the International Civil Aviation Organization, declare as follows:

**ARTICLE 1** 5**Section 1**

Each contracting State grants to the other contracting States the following freedoms of the air in respect of scheduled international air services:

- (1) The privilege to fly across its territory without landing;
- (2) The privilege to land for non-traffic purposes. 10

The privileges of this section shall not be applicable with respect to airports utilized for military purposes to the exclusion of any scheduled international air services. In areas of active hostilities or of military occupation, and in time of war along the supply routes leading to such areas, the exercise of such privileges shall be subject to the approval of the competent military authorities. 15

**Section 2**

The exercise of the foregoing privileges shall be in accordance with the provisions of the Interim Agreement on International Civil Aviation and when it comes into force, with the provisions of the Convention on International Civil Aviation, both drawn up at Chicago on December 7, 1944. 20

**Section 3**

A contracting State granting to the airlines of another contracting State the privilege to stop for non-traffic purposes may require such airlines to offer reasonable commercial service at the points at which such stops are made.

Such requirements shall not involve any discrimination between airlines operating on the same route, shall take into account the capacity of the aircraft, and shall be exercised in such a manner as not to prejudice the normal operations of the international air services concerned or the rights and obligations of a contracting State. 25

**Section 4**

Each contracting State may, subject to the provisions of this Agreement: 30

- (1) Designate the route to be followed within its territory by any international air service and the airports which any such service may use;
- (2) Impose or permit to be imposed on any such service just and reasonable charges for the use of such airports and other facilities; these charges shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services: Provided that, upon representation by an interested contracting State, the charges imposed for the use of airports and other facilities shall be subject to review by the Council of the International Civil Aviation Organization established under the above-mentioned Convention, which shall report and make recommendations thereon for the consideration of the State or States concerned. 35 40

**Section 5**

Each contracting State reserves the right to withhold or revoke a certificate or permit to an air transport enterprise of another State in any case where it is not satisfied that substantial ownership and effective control are vested in nationals of a contracting State, or in case of failure of such air transport enterprise to comply with the laws of the State over which it operates, or to perform its obligations under this Agreement. 45

**ARTICLE II****Section 1**

A contracting State which deems that action by another contracting State under this Agreement is causing injustice or hardship to it, may request the Council to examine the situation. The Council shall thereupon enquire into the matter, and shall call the States concerned into consultation. Should such consultation fail to resolve the difficulty, the Council may make appropriate findings and recommendations to the contracting States concerned. If thereafter a contracting State concerned shall in the opinion of the Council unreasonably fail to take suitable corrective action, the Council may recommend to the Assembly of the above-mentioned Organization that such contracting State be suspended from its rights and privileges under this Agreement until such action has been taken. The Assembly by a two-thirds vote may so suspend such contracting State for such period of time as it may deem proper or until the Council shall find that corrective action has been taken by such State.

**Section 2**

If any disagreement between two or more contracting States relating to the interpretation or application of this Agreement cannot be settled by negotiation, the provisions of Chapter XVIII of the above-mentioned Convention shall be applicable in the same manner as provided therein with reference to any disagreement relating to the interpretation or application of the above-mentioned Convention.

**ARTICLE III**

This Agreement shall remain in force as long as the above-mentioned Convention: Provided, however, that any contracting State, a party to the present Agreement, may denounce it on one year's notice given by it to the Government of the United States of America, which shall at once inform all other contracting States of such notice of withdrawal.

**ARTICLE IV**

Pending the coming into force of the above-mentioned Convention, all references to it herein, other than those contained in Article II, Section II and Article V, shall be deemed to be references to the Interim Agreement on International Civil Aviation drawn up at Chicago on December 7, 1944; and references to the International Civil Aviation Organization, the Assembly, and the Council shall be deemed to be references to the Provisional International Civil Aviation Organization, the Interim Assembly, and Interim Council, respectively.

**ARTICLE V**

For the purposes of this Agreement, 'territory' shall be defined as in Article II of the above-mentioned Convention.

**ARTICLE VI—SIGNATURES AND ACCEPTANCES OF AGREEMENT**

The undersigned delegates to the International Civil Aviation Conference, convened in Chicago on November 1, 1944, have affixed their signatures to this Agreement with the understanding that the Government of the United States of America shall be informed at the earliest possible date by each of the governments on whose behalf the Agreement has been signed whether signature on its behalf shall constitute an acceptance of the Agreement by that government and an obligation binding upon it.

Any State a member of the International Civil Aviation Organization may accept the present Agreement as an obligation binding upon it by notification of its acceptance to the Government of the United States, and such acceptance shall become effective upon the date of the receipt of such notification by that Government.

This Agreement shall come into force as between contracting States upon its acceptance by each of them. Thereafter it shall become binding as to each other State indicating its acceptance to the Government of the United States on the date of the receipt of the acceptance by that Government. The Government of the United States shall inform all signatory and accepting States of the date of all acceptances of the Agreement, and of the date on which it comes into force for each accepting State. 5  
10

**IN WITNESS WHEREOF**, the undersigned, having been duly authorized, sign this Agreement on behalf of their respective governments on the dates appearing opposite their respective signatures.

**DONE** at Chicago the seventh day of December, 1944, in the English language. A text drawn up in the English, French and Spanish languages, each of which shall be of equal authenticity, shall be opened for signature at Washington, D.C. Both texts shall be deposited in the archives of the Government of the United States of America, and certified copies shall be transmitted by that Government to the Governments of all the States which may sign or accept this Agreement. 15

#### **SCHEDULE 5**

Convention on International Interests in Mobile Equipment Act 2007 (Act No. 4 of 2007). 20

#### **SCHEDULE 6**

Convention on the International Recognition of Rights in Aircraft Act, 1993 (Act No. 59 of 1993). 25