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## GENERAL NOTICE

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### NOTICE 471 OF 2008

#### DEPARTMENT OF TRANSPORT

#### PUBLICATION FOR COMMENTS: CIVIL AVIATION BILL, 2008

The above mentioned Bill is hereby published for public comments. Interested parties are invited to submit written comments on the Bill on or before the 07/05/2008.

Submissions should be posted to the Director-General Department of Transport for the attention of Mr. Johann Bierman at;

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## CIVIL AVIATION BILL 2008

To repeal, consolidate and amend the aviation laws enabling effect to be given to certain International Aviation Conventions and making provision for the control and regulation of aviation within the Republic of South Africa, 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 Investigation Agency in compliance with international Conventions, to give effect to the Convention on Offences and certain other acts committed on board Aircraft; 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 additional measures directed at the more effective control of the safety and security of aircraft, airports and the like; and for other matters incidental thereto.

### CHAPTER ONE

#### PART ONE

#### DEFINITIONS

##### 1 Definitions

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

**'accident'** means any occurrence declared by regulation to constitute an accident;

**'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 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 aircraft;

**'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;

**'airport'** means an aerodrome as defined in section 1 of this Act;

**'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;

**'appointed member'** means a member of the Civil Aviation Authority Board appointed by the Minister in terms of section 42;

**'authorised officer'** means an officer designated in terms of section 54;

**'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, as an authorised person for the purposes of this Act;

(c) any member of the South African National Defence Force, as defined in section 1 of the Defence Act, 2002 (Act No. 42 of 2002);

(d) any person appointed in writing by the Director as an authorised person in terms of section 54, for the purposes of this Act; or

(e) any other person appointed in writing by the Minister as an authorised person for the purposes of this Act;

**'air navigation facility'** means 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 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 are situated within the boundaries of a designated airport, airport or heliport or not;

**'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 are situated within the boundaries of the airport or heliport or not;

**'Aviation Accident Investigation Agency'** means the Agency established in terms of section 9;

**'board'** means the board of inquiry appointed under section 28 or 29 of this Act;

**'Civil Aviation Authority'** means the South African Civil Aviation Authority contemplated in section 30;

**'Civil Aviation Authority Board'** means the Board contemplated in section 39;

**'commander'**, in relation to an aircraft, means the crew member designated as commander of that aircraft by the operator thereof, or, failing such a person, 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;

**'Contracting State'** means any State (including the Republic) which is party to the Convention;

**'Convention'** means the Convention on International Civil Aviation drawn up at Chicago on the seventh day of December, 1944, and set out in the Second Schedule to this Act, and includes any amendments thereof and additions thereto ratified and proclaimed in accordance with paragraph (b) of subsection (1) of section three;

**'convention country'** means a country in which either the Convention on Offences and certain other acts committed on board aircraft or 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;

**'Department'** means the Department of Transport in the national sphere of Government;

**'designated airport'** means any company airport as defined in section 1 of the Airports Company Act, 1993, and includes any airport or heliport designated by the Minister by notice in the Gazette as a designated airport for the purposes of this Act;

**'Director'** means the Director for Civil Aviation appointed in terms of section 51;

**'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;

**'harmful article'** means-

- (a) any ammunition as defined in section 1 of the Firearms Control Act, 2000 (Act 60 of 2000), and includes any cartridge or

projectile intended for use in the discharge of an arm in terms of that Act;

- (b) any firearm as defined in section 1 of the Firearms Control Act, 2000 (Act 60 of 2000), as amended from time to time, 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;
- (c) explosives as defined in section 1 of the Explosives Act, 1956\* (Act 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 marked or labeled 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;
- (e) any device as contemplated in section 5 of the Firearms Control Act, 2000; or
- (f) any other article 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 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 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;

**'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;

**'inspector'** means an inspector designated in terms of section 54;

**'levy'** means an amount payable at intervals or at specified times by participants in civil aviation on one or more or all of the following criteria, namely-

- (a) category of aviation service;
- (b) category of participant;
- (c) nature of aviation service;
- (d) frequency of utilisation of aviation services provided by the authorities; and
- (e) nationality of or country of registration of participant;

**'Minister'** means the Minister of Transport in the national sphere of Government;

**'Minister of Finance'** means the Minister of Finance in the national sphere of Government;

**'Minister of Public Works'** means the Minister of Public Works in the national sphere of Government;

**'oath'** includes an affirmation or declaration in the case of persons allowed by the law of any country concerned to affirm or declare instead of swearing;

**'operator'** means a natural or artificial entity, holding a valid licence and operating certificate or equivalent thereof authorizing such person to conduct scheduled or non-scheduled or general air services and may be referred to as airline, air carrier, air service operator, or commercial air transport operator, as defined;

**'owner'**, in relation to an aircraft or aerodrome, means the person in whose name the aircraft or aerodrome is registered, and includes any person who is or has been acting as agent in the Republic for a foreign owner, or any person by whom the aircraft or aerodrome is hired at the time;

**'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 a person who for the time being is in charge of the piloting of the aircraft without being under the direction of any other pilot in 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 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 organizations, workshops, ramps, fuel storage, operator offices, cargo handling areas, vehicles and aviation training organizations;

**'prescribed'** means prescribed by regulation;

**'proclamation'** means any proclamation issued under this Act;

**'regulation'** means any regulation made under this Act;

**'Republic'** includes any territory in respect of which Parliament is competent to legislate;

**'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, and includes any area, building or place at a designated airport, in respect of which the Minister has directed the management of the designated airport, or any organization conducting business at a designated airport, to institute access control and in respect of which access control has been so instituted;

**'search'** includes 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;

**'South African aircraft'** means an aircraft registered in the Republic and includes any aircraft that is operated by joint air transport operating organizations or international operating agencies established by the State and any other convention country and that is declared by the Minister of Transport, by notice in the *Gazette*, to be a South African aircraft.

**'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.

**'Transit Agreement'** means the International Air Services Transit Agreement drawn up at Chicago on the seventh day of December, 1944, and set out in the Third Schedule to this Act, and includes any amendments thereof and additions thereto ratified and proclaimed in accordance with paragraph (b) of subsection (1) of section three

**'this Act'**, includes any regulations made under this Act.

(2) The definition of 'aerodrome' in subsection (1) shall not derogate from the ordinary meaning of the word 'airport'.

- (3) For the purposes of this Act an aircraft shall be deemed to be in flight-
- (a) at any time 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;
  - (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) For the purposes of this Act an aircraft shall be deemed to be in service from the beginning 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 and includes the entire period during which the aircraft is in flight in terms of subsection (3) above.

## CHAPTER ONE

### PART TWO

#### **APPLICATION OF ACT, POWER TO CARRY OUT AND APPLY THE CONVENTION AND THE TRANSIT AGREEMENT, FUNCTIONS OF MINISTER IN CONNECTION WITH THE PROVISIONS OF THIS ACT AND THE CONVENTION AND TRANSIT AGREEMENT**

#### **2 Application of Act**

- (1) The provisions of this Act and of the Convention and of the Transit Agreement, shall, except where expressly excluded under this Act or by regulation, apply to-
  - (a) every aircraft, aerodrome, air navigation facility, aviation facility, designated airport, operator and owner;
  - (b) every person employed at or in connection with such aerodrome, air navigation facility, aviation facility or designated airport;
  - (c) all foreign registered aircraft operating in the Republic or over the territorial waters thereof; and
  - (d) all South African aircraft and personnel whether within or outside the Republic.
- (2) For the purposes of subsection (1) the personnel of an aircraft shall be deemed to include the pilot-in-command or other person in charge of the aircraft, and all other members of the crew of the aircraft.
- (3) The provisions of this Act and of the Convention and of the Transit Agreement shall not apply to-
  - (a) 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;
  - (c) aircraft or airports for the time being 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 to any such aircraft, aerodrome or person any of the said provisions with or without modification; and

(d) aircraft used in customs services.

### **3 Power to carry out and apply the Convention and the Transit Agreement**

(1) The Minister may-

(a) issue such proclamations as appear to him necessary for carrying out the Convention or the Transit Agreement and for giving effect thereto or to any of the provisions thereof; and

(b) do all things necessary to ratify or cause to be ratified on behalf of the Republic, any amendments of, or additions to, the Convention or the Transit Agreement which may from time to time be made and, by proclamation in the Gazette, declare that the amendments or additions so ratified shall 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) shall be laid upon the Table of the National Assembly and the National Council of Provinces within fourteen days after the publication of the relative proclamation in the Gazette, if the National Assembly and the National Council of Provinces are then in ordinary session or, if the National Assembly and the National Council of Provinces are not then in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session.

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

(1) The Minister shall be responsible for the carrying out of the provisions of this Act and of the Convention and of the Transit Agreement.

(2) Every person appointed under this Act or concerned with the carrying out of the provisions thereof, shall perform his or her functions and exercise any discretion expressly or impliedly vested in him or her subject to the directions and approval of the Minister.

(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.

## 5 Enactment of Conventions and Protocol

(1) Subject to the other provisions of this Act the Conventions and the Protocol in Schedules 2 and 3 to this Act have the force of law in the Republic.

(2) The President may by notice in the *Gazette* amend Schedules 2 and 3 to reflect any changes made to the Conventions and the Protocol if those changes are binding on the Republic in terms of section 231 of the Constitution of the Republic of South Africa, 1996.

## CHAPTER TWO

### PART ONE

#### ACQUISITION OR EXPROPRIATION OF LAND AND RIGHTS IN CONNECTION WITH LICENSED AIRPORTS

##### 6 Acquisition of land or rights in connection with licensed airports

(1) The Minister may out of moneys appropriated by Parliament for the purpose-

(a) in order to ensure that proper effect may be given to the provisions of this Act, the Minister may acquire land and interests in and rights to and over land adjoining or adjacent to any aerodrome 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 deemed necessary in connection with any aerodrome in respect of which a licence under the regulations has been or is to be issued.

(2) Subject to the provisions of the Expropriation Act, 1975 (Act 63 of 1975) the Minister of Public Works may, subject to an obligation to pay compensation, expropriate any property for the purposes set out in subparagraph (a) and (b) of subsection (1).

## **CHAPTER TWO**

### **PART TWO**

#### **PERMISSION TO USE LAND HELD UNDER ANY RECONNAISSANCE PERMISSION, EXPLORATION, PROSPECTING OR MINING AUTHORIZATION OR PERMISSION FOR AIRPORTS AS WELL AS TRESPASS, NUISANCE AND RESPONSIBILITY FOR DAMAGE**

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

Subject to the provisions of the Mineral and Petroleum Resources Development Act 28 of 2002 (Act 28 of 2002), the National Environmental Management Act 1998 (Act 107 of 1998), the National Water Act 1998 (Act 36 of 1998) and the Constitution of the Republic of South Africa, 1996, the Minister of Minerals and Energy may permit the use of land held under any reconnaissance permission, exploration, prospecting or mining authorization or permission for the establishment of airports or for landing places for aircraft, provided such use is not, in the opinion of the Minister of Minerals and Energy, likely to interfere with the rights of landowners, mining operations or purposes incidental thereto.

##### **8 Trespass, nuisance and responsibility for damage**

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

(2) Where material damage or loss is caused by an aircraft in flight, taking off or landing, or by any person in any such aircraft, or by any article falling from any such aircraft, to any person or property on land or water, damages may be recovered from the 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 willful act, neglect or default.

(3) The provisions of subsection (2) shall not apply where the damage or loss was caused by or contributed to by the negligence or willful act of the person by whom it was suffered.

(4) Where any damages recovered from or paid by the owner of an aircraft under this section arose from damage or loss caused solely by the wrongful or negligent action or omission of any person other than the owner or some person in

his employment, the owner shall, subject to the provisions of paragraph (b) of subsection (5), be entitled to recover from that person the amount of such damages.

(5)(a) In any proceedings against the owner for the recovery of damages in terms of subsection (2) such owner may, on making such application to the court and on giving such security as to costs as may be prescribed by rules of court, join any person referred to in subsection (4) as a defendant.

(5)(b) If such person is not so joined he shall not in any subsequent proceedings taken against him by the owner be precluded from disputing the reasonableness of any damages recovered from or paid by the owner.

(6) An owner or operator of an aircraft shall 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 THREE

## THE ESTABLISHMENT OF THE AVIATION ACCIDENT INVESTIGATION AGENCY IN COMPLIANCE WITH THE INTERNATIONAL CIVIL AVIATION CONVENTION

#### 9 Establishment of Aviation Accident Investigation Agency

There is hereby established an Agency to be known as the Aviation Accident Investigation Agency, which shall be a juristic person.

#### 10 Objects of Aviation Accident Investigation Agency

(1) The objects of the Aviation Accident Investigation Agency are—

- (a) to promote compliance with the provisions and procedures of Annex 13 to the Convention;
- (b) to investigate aircraft accidents and incidents in compliance with the provisions and procedures Annex 13 to the Convention; and
- (c) to discharge all other functions and obligations in compliance with the provisions and procedures Annex 13 to the Convention.

(2) The Aviation Accident Investigation Agency shall not apportion blame or liability in any report following the investigation of any aircraft accident or incident and the sole objective of the investigation is accident prevention.

#### 11 Constitution of Aviation Accident Investigation Agency

(1) The Aviation Accident Investigation Agency consists of one full-time and four part-time members appointed by the Minister.

(2) The Chairperson is appointed by the Minister.

#### 12 Procedure and requirements in appointing members of the Aviation Accident Investigation Agency

(1) The members contemplated in section 11 must be appointed only after—

- (a) the Minister has by notice in the Gazette and the media invited interested parties to nominate persons suitable for appointment;

(b) the Minister has submitted a list of at least 10 suitable candidates to the relevant committees of Parliament, unless fewer than 10 nominations are received, in which case the Minister must submit all nominations received to the relevant committees of Parliament; and

(c) the relevant committees of Parliament have submitted a shortlist of at least six candidates to the Minister after considering persons so nominated, having due regard to the functions of the Aviation Accident Investigation Agency.

(2) In appointing the members of the Aviation Accident Investigation Agency the Minister shall have regard to one or more of the following factors-

(a) technical knowledge in matters relating to civil aviation;

(b) special skills, technical qualifications, professional standing, expertise or experience in matters concerning civil aviation;

(c) demonstrated knowledge in accident reconstruction, safety engineering, human factors, transportation safety or transportation regulation; and

(d) any other factor or factors which the Minister considers, in his or her reasonable discretion, to be appropriate.

(3) No person shall be appointed as a member of the Aviation Accident Investigation Agency unless he or she is a South African citizen permanently resident in the Republic.

(4) A member of the Aviation Accident Investigation Agency shall be appointed for a period of three years and shall at the expiry of his or her term of office be eligible for re-appointment for one further term of three years.

(5) The Minister may relieve a member of the Aviation Accident Investigation Agency from his office at his request, or of his own accord remove him from office-

(a) for misconduct;

(b) on account of continued ill-health; or

(c) on account of incapacity to carry out his or her duties of office efficiently.

(6) Any vacancy on the Aviation Accident Investigation Agency arising by virtue of the provisions of subsection (5) or caused by the death of a member, or

for any other reason whatsoever, shall, subject to the provisions of this section, be filled by the Minister by the appointment of another person for the remaining portion of the period for which the member concerned was appointed.

- (7) The Minister may appoint any eligible person to act-
  - (a) in any member's stead; or
  - (c) in a temporary capacity in any vacancy in the Aviation Accident Investigation Agency, for such period as the Minister may determine.

### 13 **Appointment of Staff**

(1) The Aviation Accident Investigation Agency shall at its first meeting or as soon as practicable thereafter, in consultation with the Minister, appoint the Chief Investigator and such staff as may reasonably be necessary to assist the Aviation Accident Investigation Agency with the work arising from or otherwise connected with the performance of the functions of the Aviation Accident Investigation Agency.

(2) The Aviation Accident Investigation Agency shall be responsible for the management of and administrative control over the staff appointed in terms of subsection (1) and shall for those purposes be accountable to the Minister.

(3) In the performance of its administrative and secretarial functions under this Act the Aviation Accident Investigation Agency shall be assisted by officers in the public service made available for such purpose by the Director-General: Transport.

(4) In addition to the staff so appointed in subsection (1) the Aviation Accident Investigation Agency may appoint staff as well as the Chief Investigator and such other investigators in consultation with the Minister.

(5) The Aviation Accident Investigation Agency, in consultation with the Minister 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, with the concurrence of the Minister of Finance on an annual basis, determine the remuneration, including reimbursement for travelling, subsistence and other expenses, of such persons.

(6) Every person employed in the performance of the functions of the Aviation Accident Investigation Agency, including any person referred to in subsection (3), (4) and (5) shall aid in preserving secrecy in regard to any matter or information that may come to his or her knowledge in the performance of his or her duties in connection with the said functions, except in so far as the

publication of such matter or information shall be necessary for the purpose of the report of the Aviation Accident Investigation Agency.

**14 Remuneration of members and staff of the Aviation Accident Investigation Agency**

(1) An appointed member or staff of the Aviation Accident Investigation Agency receives such remuneration and allowances as may be determined by the Minister in consultation with the Minister of Finance.

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

**15 Functions of the Aviation Accident Investigation Agency**

(1) The functions of the Aviation Accident Investigation Agency are to-

(a) take steps to achieve the objects as contemplated in section 11;

(b) investigate aircraft accidents and 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;

(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 Accident Investigation Agency;

(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 the provisions and procedures of Chapter 6 of Annex 13 to the Convention concerning any aircraft accident or incident investigated by the Agency; and

(g) monitor the implementation of safety recommendations as issued by Contracting States.

**16 Powers of Aviation Accident Investigation Agency**

(1) The Aviation Accident Investigation Agency may do all that is necessary or expedient to perform its functions effectively, which includes the power to-

- (a) determine its own staff establishment subject to section 13 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) open and operate its own bank accounts;
- (e) insure itself against any loss, damage or risk;
- (f) perform legal acts, including acts in association with or on behalf of any other person or organ of state;
- (g) institute or defend any legal action;
- (h) to investigate aircraft accidents and incidents;
- (i) determine categories of aircraft accidents and incidents that should be investigated by the Aviation Accident Investigation Agency;
- (j) make rules for the internal procedure for the investigation of aircraft accidents and incidents by the Aviation Accident Investigation Agency;
- (k) delegate the investigation of any aircraft accident or incident to any other Contracting State;
- (l) collect and disseminate relevant information;
- (m) re-open any investigation;
- (n) establish an aircraft accident and incident reporting system to facilitate the collection of information on actual or potential safety deficiencies;
- (o) upon request conduct investigations on behalf of other contracting States, and

- (p) do anything that is incidental to the exercise of any of its powers.
- (2) The Civil Aviation Investigation Agency may with the approval of the Minister, and in consultation with the Minister of Finance raise money by way of loans.
- (3) The Aviation Accident Investigation Agency shall, if the accident occurred within the Republic, have the power to summon and examine witnesses under oath and to call for the production and grant inspection, of books, logs, certificates, licences, medical records and other documents, 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 Accident Investigation Agency's functions.
- (4) The Aviation Accident Investigation Agency may make rules in relation to the conduct and procedure of its meetings.
- (5) The Aviation Accident Investigation Agency may make rules in relation to the notification, reporting, investigation of aircraft accidents and incidents and the conduct and procedures of its investigations.
- (6) The Aviation Accident Investigation Agency may authorise any of its members to act on its behalf in any matter.

## 17 **Designation and powers of Investigators**

- (1) The Chief Investigator may designate an investigator-in-charge and any number of investigators to investigate any aircraft accident or incident.
- (2) An investigator designated in terms of subsection (1) shall have authority to-
  - (a) have free access to and control over an aircraft which has been involved in an aircraft accident or 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 incident which may be of assistance in an investigation, are located;
  - (b) preserve an aircraft which has been involved in an accident or incident or the wreck or wreckage, any remains and any marks resulting from the aircraft accident or incident which may be of assistance in the investigation, by any means available, including photographic means;
  - (c) examine an aircraft involved in an accident or incident, the wreck or wreckage, any part or component thereof or anything transported therein or any marks resulting from the aircraft accident or 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 anything transported therein for the purpose of the investigation or for an inquiry by a board of inquiry appointed in terms of section 28 or 29 of the Act;

(d) compile reports in connection with the investigation;

(e) have free 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, which documents, books, notes, photographs, recordings and transcripts shall be produced without delay by the possessor thereof when so requested;

(f) obtain information and take statements from any person which may be necessary for the investigation;

(g) have free access to and control over all relevant evidence including flight recorders and air traffic service recordings;

(h) summon and examine witnesses under oath and to call for the production, and grant inspection of books, logs, certificates, licences and other documents including medical information and records 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 Accident Investigation Agency functions; and

(i) regulate, prohibit and control any access to the accident scene or the accident scene of any aircraft accident or incident.

## 18 Search and Seizure by appointed Investigators

(1) In the execution of the authority in section 19 an investigator may search and seize any property or item, including medical records, recorders and air traffic service recordings of an aircraft accident or incident without a warrant.

(2) An investigator in respect of any provision of this Act is deemed to have been appointed as a peace officer by the Minister of Justice in terms of section 334 of the Criminal Procedure Act, 1977 (Act 51 of 1977), for the national territory of 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, 1977.

(4) An investigator may use the powers in terms of this subsection only to serve the purposes of this Act and matters incidental thereto and shall take the necessary steps to secure the safekeeping of the property or items seized.

**19 Participation in investigation by accredited representatives, experts and advisors in compliance with Annex 13 of the Convention**

(1) The Aviation Accident Investigation Agency must allow accredited representatives, experts and advisors of contracting States participation in any aircraft accident investigation or incident under investigation in compliance with Annex 13 of the Convention in order to-

(a) advise the Aviation Accident Investigation Agency during or after an investigation into the identification of the cause of the accident or incident under investigation;

(b) assist the Aviation Accident Investigation Agency in any manner during or after an investigation into the identification of the cause of the accident or incident under investigation; and

(c) to make safety recommendations to the Aviation Accident Investigation Agency in connection with the investigation into any aircraft accident or incident under investigation.

(2) In participating in any investigation the accredited representatives, experts and advisors of contracting States shall have the right to-

(a) visit the scene of any aircraft accident or incident under investigation;

(b) have access to any relevant information;

(c) participate in the identification of victims;

(d) assist in questioning surviving passengers who are citizens of the State; and

receive a copy of the final report of the Aviation Accident Investigation Agency.

**20 Liability of members, staff and accredited representatives, experts and advisors of the Aviation Accident Investigation Agency**

(1) A member of the Aviation Accident Investigation Agency, appointed staff and any accredited representatives, experts and advisors is not personally liable in respect of anything reflected in any report, finding, point of view, advice or

recommendations made or expressed in good faith or made known in terms of this Act or the Constitution.

(2) The internal proceedings and the investigation of aircraft accidents and incidents of the Aviation Accident Investigation Agency shall not be open to the public.

## **21 Independence and impartiality of Aviation Accident Investigation Agency**

(1) The members, staff and accredited representatives, experts and advisors of the Aviation Accident Investigation Agency shall 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 the Constitution, this Act and the Convention.

(2) No member of the Aviation Accident Investigation Agency, member of staff or accredited representatives, experts and advisors of the Aviation Accident Investigation Agency shall conduct an investigation in terms of this Act or render assistance with regard thereto in respect of a matter in which he or she has any pecuniary or other interest which might preclude him or her from exercising, carrying out or performing his or her powers, duties and functions in a fair, unbiased and proper manner.

(3) If any member of the Aviation Accident Investigation Agency, any member of the staff or accredited representatives, experts and advisors of the Aviation Accident Investigation Agency fails to disclose an interest contemplated in subsection (2), the Aviation Accident Investigation Agency may take such steps as it deems necessary to ensure a fair, unbiased and proper investigation.

## **22 Conflict of Interest**

Any member of the Aviation Accident Investigation Agency or any member of the staff or accredited representatives, experts and advisors of the Aviation Accident Investigation Agency 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 Accident Investigation Agency during business hours.

**23 Expenditure in connection with execution of the functions and objects of the Aviation Accident Investigation Agency**

The expenditure in connection with the execution of the functions of the Aviation Accident Investigation Agency shall be paid out of money appropriated by Parliament for such purpose.

**24 Protection of Information of Aviation Accident Investigation Agency**

The information, statements, communications between persons involved in the operation of the aircraft, medical or private information regarding persons in aircraft accidents or incidents, opinions expressed in the analysis of information including flight recorder information obtained by the Aviation Accident Investigation Agency during the course of any investigation, including the cockpit voice recordings shall be privileged from disclosure and may not be used for any disciplinary, civil or criminal or any other legal or administrative proceedings.

**25 Public Finance Management Act 1999 binds the Aviation Accident Investigation Agency**

The Aviation Accident Investigation Agency must comply with the provisions of the Public Finance Management Act, 1999 (Act 1 of 1999).

**26 Agreement between the Aviation Accident Investigation Agency and the Director**

(1) The Aviation Accident Investigation Agency and the Director may enter into agreements with regards to-

(a) the secondment of staff of the Director to the Aviation Accident Investigation Agency for purposes of rendering any assistance during any investigation of any aircraft accidents and incidents; and

(b) any other matter relating or incidental to the investigation of aircraft accidents and incidents by the Aviation Accident Investigation Agency .

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

**27     General provisions regarding the Aviation Accident Investigation Agency**

- (1)     Three members of the Aviation Accident Investigation Agency shall form a quorum.
- (2)     The Aviation Accident Investigation Agency shall not inquire into-
  - (a)     any occurrence which took place and ended before the commencement of this Act; or
  - (b)     occurrences 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.

## CHAPTER FOUR

### MINISTERIAL BOARDS OF INQUIRY

#### 28 Accident inquiry Board

(1) In the event of any accident arising out of or in the course of air navigation and occurring in or over the Republic or the territorial waters thereof, or, in the case of South African aircraft, wheresoever they may be, the Minister may, after the completion of any investigation by the Aviation Accident Investigation Agency, appoint one or more persons as a board of inquiry, known as an accident inquiry board, to make an investigation into the cause of and responsibility for the accident and report to him thereon.

(2) The accident inquiry board shall, if the accident occurred within the Republic, have power to summon and examine witnesses on oath and to call for the production, and grant inspection, of books, logs, certificates, licences, medical records and other documents.

(3) The laws and rules governing the magistrates' courts of the Republic, shall *mutatis mutandis* apply to procuring the attendance of witnesses, their examination, the production of books and documents, and the like, and for that purpose the chairman of the accident inquiry board or, where the board consists of one person only, such person shall have power to sign such documents as may be necessary for the purpose of the inquiry, in the same manner as the magistrate or the clerk of the court has power to do under the rules of the magistrates' courts.

(4) Any process to be served in terms of subsections (2) and (3) for purposes of such an inquiry shall be served by a member of the South African Police Service.

(5) Nothing in this section contained shall be construed as affecting the powers or duties conferred or imposed upon judicial officers by the Inquests Act, 1959 (Act 58 of 1959).

(6) Where an accident involving loss of life is enquired into under this section by a board, the inquiry may not be a joint inquiry by the board and an inquest by a judicial officer in terms of the Inquests Act, 1959 (Act 58 of 1959).

29 **Boards of inquiry into certain offences, the prohibition and control in aircraft, prohibition and control in restricted areas and prohibition and control in air navigation- or aviation facilities**

(1) When an offence has been committed with reference to any provision of section 79, 84, 85 and 86 or if any orders have been issued under section 88 to counter any action contemplated in that section, the Minister may appoint a board of inquiry, which shall consist of so many persons as the Minister may determine, to inquire into any aspect of such offence or such action or any circumstance relating thereto, which the Minister may refer to the board, and to report to him thereon and make such recommendations with regard thereto as the board may think fit.

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

(3) The board shall have 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.

(4) The laws and rules governing magistrates' courts shall *mutatis mutandis* apply with reference to procuring the attendance of witnesses, their examination, the production of books and documents, and the like, and for that purpose the chairperson of the board or, where the board consists of one person only, such person shall have power to sign such documents as may be necessary for the purpose of the inquiry, in the same manner as the magistrate or the clerk of the court has power to do under the rules of the magistrates' courts.

(5) Any process to be served for the purposes of the board shall 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.

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

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

(8) Where an offence or any action contemplated in subsection (1) is associated with an accident within the meaning of section 28 of this Act, the Minister may appoint one board consisting of the same member or members, to conduct a joint inquiry under section 28 and 29.

**CHAPTER FIVE****PART ONE****CIVIL AVIATION AUTHORITY****30 Establishment of the Civil Aviation Authority**

The Civil Aviation Authority is hereby established as a juristic person.

**31 Objects of the Civil Aviation Authority**

The objects of the Civil Aviation Authority are to-

- (a) control and regulate civil aviation safety and security;
- (b) oversee safety and security matters in the civil aviation industry;
- (c) oversee the functioning and development of the civil aviation industry;  
and
- (d) promote civil aviation safety and security.

**32 Functions of the Civil Aviation Authority**

(1) The Civil Aviation Authority has the function of conducting the safety and security oversight of civil aviation in South Africa by means that include the following:

- (a) developing and promoting appropriate, clear and concise regulatory requirements, and technical aviation safety and security standards;
- (b) developing effective enforcement strategies to secure 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;

- (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 monitor the safety performance of the aviation industry, to identify safety-and security related trends and risk factors and to promote the development and improvement of the system;
- (g) conducting regular and timely assessment of international safety and security developments.

(2) The Civil Aviation Authority also has the following safety-and security related functions:

- (a) encouraging a greater acceptance by the aviation industry of its obligation to maintain high standards of aviation safety, through:
  - (i) comprehensive safety and security education and training programs;
  - (ii) accurate and timely aviation safety and security advice;
  - (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
- (b) promoting communication with all interested parties on aviation safety and security issues.

(3) The Civil Aviation Authority also has the following functions to:

- (a) administer this Act and the Acts in Schedule 4;
- (b) recommend to the Minister the introduction or amendment of civil aviation safety and security legislation;
- (c) make recommendations to the Minister in respect of the conclusion of any international agreement with another State, Government or international organization;
- (d) perform any other functions as are conferred on it by or under any other law;
- (e) execute an order issued in terms of section 38;

- (f) implement any mutual agreements and Conventions;
  - (g) perform any other functions prescribed by the regulations, being functions relating to any matters referred to in this section;
  - (h) promoting the development of South Africa's civil aviation safety and security capabilities, skills and services, for the benefit of the South African community;
  - (i) providing consultancy and management services relating to any of the matters referred to in this Act, both within and outside South African territory;
  - (j) perform any functions incidental to any of the functions specified in this section;
  - (k) investigate aircraft accidents and incidents that the Aviation Accident Investigation Agency has determined it will not investigate in terms of section 16(1)(h), to the extent that the Director deems necessary; and
  - (l) to perform its functions in the most cost-efficient and effective manner and in accordance with the values and principles mentioned in section 195 of the Constitution in order to achieve the objects as referred to in section 31.
- (4) The Civil Aviation Authority may perform its functions both within and outside the Republic.
- (5) The Civil Aviation Authority must perform its functions in a manner consistent with-
- (a) the objects mentioned in section 31; and
  - (b) the obligations of the Republic under-
    - (i) any international agreement which is binding on the Republic; and
    - (ii) customary international law binding on the Republic by virtue of section 232 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996).

33 **Staff of the Civil Aviation Authority**

- (1) The Director may on such conditions as the Civil Aviation Authority Board determines appoint such employees as are necessary to enable the Civil Aviation Authority to properly carry out its functions.
- (2) The Civil Aviation Authority pays its employees out of its funds such remuneration, allowances, subsidies and other benefits as the Civil Aviation Authority Board determines.
- (3) The Minister may after consultation with the Civil Aviation Authority and the Public Service Commission and with the written consent of an officer in the employ of the Department second that officer to the Civil Aviation Authority or make available the services of that officer to the Civil Aviation Authority.

34 **Funding of the Civil Aviation Authority**

- (1) The Civil Aviation Authority is funded from-
  - (a) prescribed civil aviation regulatory charges;
  - (b) prescribed levies or charges on aircraft passengers and participants in civil aviation;
  - (c) interest on invested cash balances;
  - (d) loans granted in terms of subsection (2);
  - (e) money lawfully accruing from any other source;
  - (f) any other money received in terms of Chapter 15 of this Act or any other civil aviation legislation, including the income derived from the fees contemplated in this Act,
  - (g) prescribed levies on the supply of aircraft fuel; 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 in respect of any offence provided for in any legislation administered by the Civil Aviation Authority be utilised by the Civil Aviation Authority in respect of any civil aviation safety and security investigation.

**35 Restriction on use of name**

(1) No person may under a name containing the words ' South African Civil Aviation Authority' or the translation thereof in any other official language-

- (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, or to both a fine and imprisonment.

**36 Conflict of Interest**

(1) Any person appointed to perform any function in terms of the Act or the regulations must upon such appointment 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 the Act or the Regulations.

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

(3) 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.

(4) The approval granted in subsection (3) will be open to inspection by the public at the office of the Civil Aviation Authority during working hours.

**37 Limitation of liability**

No person, including the State, 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.

**38 Ministerial order**

(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-

(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) may not be inconsistent with the provisions of the Constitution or any law administered by the Civil Aviation Authority.

(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, in concurrence with the Minister of Finance, out of monies appropriated by Parliament, compensate the Civil Aviation Authority for any cost or other expense which is a direct result of any order issued by the Minister in terms of subsection (1) and which the Civil Aviation Authority cannot readily recover from participants in civil aviation or any other person who has benefited from any action taken by the Civil Aviation Authority in complying with that order.

(5) 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.

(6) 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

## **CHAPTER FIVE**

### **PART TWO**

#### **CIVIL AVIATION AUTHORITY BOARD**

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

- (1) There is hereby established a Board to be known as the Civil Aviation Authority Board.
- (2) The Civil Aviation Authority Board consists of five members.

##### **40 Objects of the Civil Aviation Authority Board**

The objects of the Civil Aviation Authority Board are to—

- (a) determine, oversee, implement and revise the corporate governance structures within the Civil Aviation Authority;
- (b) determine, oversee, implement and revise the human resources policies and strategies of the Civil Aviation Authority; and
- (c) set strategic goals for the Civil Aviation Authority.

##### **41 Functions of the Civil Aviation Authority Board**

- (1) The Civil Aviation Authority Board-
  - (a) must determine the remuneration policy of employees of the Civil Aviation Authority;
  - (b) must determine the policy in respect of allowances, subsidies and other service benefits of the employees of the Civil Aviation Authority;
  - (c) must provide guidance to the Director to achieve the strategic goals of the Civil Aviation Authority;
  - (d) may refer to the Minister any matter concerning the functioning of the Authority;

- (e) must compile an annual report on the financial state of affairs of the Civil Aviation Authority in conjunction with the annual report of the Director
- (2) As accounting authority, the Civil Aviation Authority Board is responsible for-
  - (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, 1999.
- (3) Generally perform all such acts as in the opinion of the Civil Aviation Authority Board are necessary for or incidental to the attainment of the objects for which the Civil Aviation Authority Board is established.
- (4) -The Civil Aviation Authority Board may authorise any of its members to act on its behalf in any matter.
- (5) The Civil Aviation Authority Board may-
  - (a) appoint one or more committees consisting of one or more of its members and such other persons as it deems fit, to advise it on the exercise and performance of the Civil Aviation Authority Board's powers and functions;
  - (b) delegate or assign to any committee such of its powers, duties and functions as it deems fit;
  - (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).
- (6) A member of the Civil Aviation Authority Board shall not be personally liable in respect of anything reflected in any report submitted by the Civil Aviation Authority Board, finding, point of view, advice or recommendations made or expressed in good faith and submitted to Parliament or any provincial legislature or made known in terms of this Act or the Constitution.

**42 Appointment of members of the Civil Aviation Authority Board**

- (1) The Minister appoints four members, of whom-
- (a) one must be the non-executive chairperson;
  - (b) one must be, if the Minister specifies an office in the Department for the purposes of this subsection, the person for the time-being holding that office;
  - (c) one must be a person with suitable expertise in corporate governance; and
  - (d) one must be a person experienced in civil aviation matters.
- (2) The Director of the Civil Aviation Authority is also a member of the Civil Aviation Authority Board.
- (3) (a) The members of the Civil Aviation Authority Board contemplated in paragraph (a) (b) (c) and (d) of subsection (1) 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.
- (3) (b) -An appointed member of the board may be re-appointed for a further period not exceeding three years, in which case the procedure contemplated in subsection (4) paragraph (a) does not apply.
- (3) (c) Notwithstanding subsection (3) paragraph (b) the Minister may extend the term of office of any appointed member by such further period as it may take to finalize the appointment of a new Civil Aviation Authority Board.
- (4) The members contemplated in paragraphs (a), (b), (c) and (d) of subsection (1) must be appointed only after-
- (a) the Minister has by notice in the Gazette and the media invited interested parties to nominate persons suitable for appointment; and
  - (b) the Minister is satisfied that the person is suitably experienced or possesses qualifications in respect of one or more of the following:
    - (i) civil aviation;
    - (ii) corporate governance;
    - (iii) environmental management;
    - (iv) organized professionals and labour;

- (v) economic analysis; and
- (vi) aviation infrastructure.

(5) The Minister must within 30 days from the date of appointment of the member or alternate member of the Civil Aviation Authority Board, notify Parliament of such appointment and publish a notice in the Gazette.

(6) (a) The majority of the members of the Civil Aviation Authority Board must not be in the full-time service of the State.

(6)(b) Members of the Civil Aviation Authority Board must be citizens of the Republic.

#### 43 **Meetings of the Civil Aviation Authority Board**

(1) The meetings of the Civil Aviation Authority Board shall be held at a time and place to be determined by the Chairperson and all subsequent meetings shall, 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.

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

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

(4) The Chairperson of the Civil Aviation Authority Board shall preside 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 thereat may elect one of their number to preside at such meeting.

(5) The decision of a majority of the members of the Civil Aviation Authority Board present at any meeting thereof shall be deemed to be a decision of the Civil Aviation Authority Board: Provided that in the event of an equality of votes on any matter before a meeting of the Civil Aviation Authority Board, the person presiding at such meeting shall have a casting vote in addition to his deliberative vote.

(6) A member of the Civil Aviation Authority Board shall not be present at or take part in the discussion of or vote upon any matter before the Civil Aviation

Authority Board or any committee thereof in which he or his spouse, or his partner or employer, other than the State, or the partner or employer of his spouse, has, directly or indirectly, any pecuniary interest.

**44 Remuneration of appointed members**

(1) Subject to the provisions of 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 and after consultation with relevant stakeholders in the civil aviation industry.

(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 remuneration in addition to his or her remuneration as an officer of the State, nor is he or she paid any allowance in respect of subsistence and transport at a rate higher than that applicable to him or her as such an officer.

**45 Removal of member of Civil Aviation Authority Board**

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

(a) is convicted-

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

(ii) of any offence in terms of the Prevention of Corruption Act, 1958 (Act 6 of 1958), the Prevention and Combating of Corrupt Activities Act, 2004, the Companies Act, 1973, Prevention of Organised Crime Act 121 of 1998 or of contravening this Act;

(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 a political office bearer;

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

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

(f) is relieved of his or her office under subsection (2).

(2) The Minister must immediately relieve any appointed member Civil Aviation Authority Board if that member has-

(a) failed to immediately vacate his or her office in terms of subsection (1);

(b) failed to comply with subsection (1) of section 46;

(c) failed to attend three consecutive meetings of the Civil Aviation Authority Board without prior leave of the Civil Aviation Authority Board as noted in the minutes of those meetings;

(d) been unable to perform his or her functions of office effectively due to continued serious ill-health;

(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 by a court; or

(f) become of unsound mind.

(3) The Minister may relieve the appointed members of the Civil Aviation Authority Board of their office if-

(a) the appointed member or members have failed to substantially comply with the performance agreement entered into in terms of section 47;

(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;

(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) 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 of their office on the same date and on the same conditions; and

(c) the Minister has within seven days of issuing the notification contemplated in paragraph (b) (i) tabled a copy thereof 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 or vacates his or her 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 subsection (4) subparagraph (a) of section 42 does not apply in respect of an appointment in terms of this subsection.

#### **46 Conflict of interest of members of the Civil Aviation Authority Board**

(1) Every member of the Civil Aviation Authority Board must within 14 days of his or her appointment to the Civil Aviation Authority Board submit a written statement to the Minister declaring that he or she at the time of his or her appointment is not disqualified in terms of the criteria contemplated in paragraphs (a), (b), (c), (d) and (e) of subsection (1) of section 45 to be appointed as a member of the Civil Aviation Authority Board.

(2) If a member of the Civil Aviation Authority Board, or his or her spouse, immediate family member, life partner or business associate, has any direct or indirect financial interest in any matter to be dealt with at any meeting of the Civil Aviation Authority Board, that member-

(a) must immediately after that interest has come to his or her attention, disclose that interest and the extent thereof in writing to the chairperson, who must table that statement at the beginning of the next meeting of the Civil Aviation Authority Board;

(b) may not attend any portion of a meeting of the Civil Aviation Authority Board during the consideration of that matter by the Civil Aviation Authority Board;

(c) may not in any manner take part as a member of the Civil Aviation Authority Board in the consideration of that matter by the Civil Aviation Authority Board; and

(d) may not in any manner endeavour to influence the opinion or vote of any other member of the Civil Aviation Authority Board in connection with that matter.

**47 Performance Agreement with the Civil Aviation Authority Board**

(1) The Minister and the Civil Aviation Authority Board must enter into a written performance agreement relating to-

(a) the State's requirements in respect of the Civil Aviation Authority Board's scope of business, efficiency and financial performance, and achievement of objectives;

(b) the principles to be followed by the Civil Aviation Authority Board for purposes of business planning;

(c) such measures which are necessary to protect the financial soundness of the Civil Aviation Authority Board;

(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 Board; and

(e) any other matter relating to the performance of the Civil Aviation Authority Board's functions under this Act.

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

(3) 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.

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

(5) Failure by the Civil Aviation Authority Board to comply with any provision of the performance agreement does not affect the validity or enforceability of any agreement entered into, or any right, obligation or liability, acquired or incurred by the Civil Aviation Authority Board.

(6) In the exercise of the powers and performance of the duties referred to in this Act the Civil Aviation Authority Board is accountable solely and directly to the Minister in respect of issues relating to the functions as determined in section 41.

**48 Business and financial plan**

(1) The Civil Aviation Authority Board must by 31 December of each year submit to the Minister a business and financial plan in respect of the ensuing financial year and each of the four immediately following financial years, containing the information, taking into account the terms of the performance agreement contemplated in section 47 as the Minister or the Minister of Finance may require.

(2) The structure of the business and financial 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 47.

**49 Application of Public Finance Management Act 1999**

The provisions of the Public Finance Management Act 1999 (Act No 1 of 1999), apply to the Civil Aviation Authority Board.

**50 Annual report**

(1) The Civil Aviation Authority Board must within the time required by the Public Finance Management Act 1999 submit to the Minister an annual report pertaining to the financial state of affairs of the Civil Aviation Authority Board as at the end of the immediately preceding financial year, consisting of-

(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 Authority as at the end of that financial year;

(b) a report by the board in accordance with the provisions of subsection (2);

(c) a report by the auditor of the board in accordance with the provisions of subsection (3); and

(d) any other statement or report which the Minister or the Minister of Finance may require.

(2) The report of the Civil Aviation Authority Board referred to in subsection (1) (b) must deal with the state of affairs, the activities and operations, and the financial position of the Authority, and must-

(a) state the extent to which the board has achieved or advanced its objectives during the financial year concerned and specifically the detailed objectives of the business and financial plan;

- (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
  - (c) indicate the amount of money, if any, received from the State and any other commitment furnished by the State.
- (3) The auditor's report referred to in subsection (1) (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 Authority in accordance with generally accepted accounting practice, as applied on a basis consistent with that of the preceding year;
  - (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;
  - (c) the transactions of the Authority 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 1999, and any applicable directives or regulations made thereunder;
  - (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 Authority;
  - (e) there are adequate measures and procedures for the proper application of sound economic, efficient and effective management; and
  - (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.
- (4) The Minister must cause copies of the financial report submitted to him or her in terms of subsection (1) 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.
- (5) A copy of the financial report submitted to the Minister in terms of subsection (1) must be open to inspection by the public at the head office of the Authority during business hours.

## CHAPTER FIVE

### PART THREE

#### DIRECTOR OF CIVIL AVIATION

##### 51 Appointment of Director of Civil Aviation

- (1) The Minister shall appoint a person known as the Director of Civil Aviation.
- (2) In appointing the Director the Minister shall have regard to the following factors-
  - (a) such person's management and technical knowledge and experience in a field related to aviation;
  - (b) such person's fitness for the efficient discharge of the Director's powers and duties under the Act, the Regulations and any other law;
  - (c) any special skills, qualifications, administrative expertise or experience in matters concerning aviation; and
  - (d) any other factor or factors which the Minister considers, in his or her reasonable discretion, to be appropriate.
- (6) The Director holds his or her office for a period not exceeding five years.
- (7) The Director is appointed on the conditions, including conditions providing for remuneration and allowances as the Minister determines upon his or her appointment.
- (8) The Director may be reappointed at the expiry of his or her term of office.
- (9) The Director holds office on a full-time basis.
- (10) The Director shall be a South African citizen who is a fit and proper person to hold such office.
- (11) 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.

**52 Duties of Director**

- (1) The Director is the head of the Civil Aviation Authority's administration and manages the Civil Aviation Authority.
- (2) The Director has the powers and must perform the duties conferred or imposed upon him or her by or in terms of 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:
  - (a) solely and directly to the Minister in respect of issues relating to safety and security oversight; and
  - (b) to the Civil Aviation Board in respect of the implementation of governance policies as directed by the Civil Aviation Board.

**53 Responsibilities**

- (1) Subject to the provisions of the Act the Director-
  - (a) is responsible for the safety and security oversight functions pertaining to civil aviation and shall administer and enforce the regulations;
  - (b) takes all decisions 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 59;
  - (d) is responsible for the submission to the Minister of an annual report in conjunction with the Civil Aviation Board concerning the activities of the Civil Aviation Authority, other than those set out in section 50;
  - (e) is responsible to exercise all powers granted to and duties imposed on the Director in terms of the Act and Regulations;
- (2) The Director is responsible in particular for-
  - (a) the appointment of staff of the Civil Aviation Authority;
  - (b) the organisation and control of the staff;

- (c) the formation and development of an efficient administration;
- (d) the establishment of an inspectorate to verify staff credentials;
- (e) the establishment and maintenance of a register of inspectors, authorised officers and authorised persons;
- (f) the maintenance of discipline; and
- (g) the effective deployment and utilisation of staff to achieve maximum operational results.

#### 54 **Powers of the Director**

- (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.
- (2) The Director shall-
  - (a) sign and issue to each authorised officer, inspector and authorised person appointed by him or her, a document which shall state the full name and contain photograph of such authorised officer, inspector or authorised person and contain a statement indicating that-
    - (i) such authorised officer, inspector or authorised person has been designated in terms of subsection (1); and
    - (ii) such authorised officer, inspector or authorised person is empowered to exercise the powers entrusted to him or her in terms of the Act and Regulations.
- (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) paragraph (a)(ii).
- (4) The qualifications and requirements for persons designated in subsection (1) shall be as prescribed.

**55 Assignment of powers and duties**

- (1) The Director may-
  - (a) assign 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;
  - (b) delegate 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 an employee of the Civil Aviation Authority to perform any of the Director's duties in terms of this Act.
- (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 duties and powers personally.

**56 Acting Director**

- (1) When the Director is absent from the Republic or otherwise unable to fulfil the duties of the Director, the Director will appoint a member of the staff of the Civil Aviation Authority to act as Director.
- (2) An Acting Director has the responsibilities, powers and functions of the Director.
- (3) The period of appointment of an Acting Director in subsection (1) may not exceed thirty days.
- (4) The Minister must appoint a person to act as Director-
  - (a) during a vacancy in the office of Director, whether or not an appointment has previously been made to the office; or
  - (b) during any period of absence exceeding 30 days in terms of subsection (1), or for any other reason when the Director is unable to perform the functions of the office of Director.
- (5) A person appointed in subsection (4) shall not continue so to act for more than 12 months.

(6) A person acting as the Director for any period longer than thirty consecutive days shall be paid such remuneration and allowances as the Civil Aviation Authority Board determines.

**57 Conflict of Interest**

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 approval of the Minister.

**58 Consultation**

The Director must in the performance of his functions and responsibilities endeavour to consult with relevant persons, bodies and organisations engaged in civil aviation.

**59 Minister and Director must enter into an agreement about the performance by the Director of his functions, duties and responsibilities.**

(1) The Minister and Director must enter into an agreement about the performance of the Director's functions, powers and responsibilities in terms of this Act.

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

## CHAPTER SIX

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

#### 60 Monitoring of Compliance

(1) For purposes of monitoring compliance with any legislation administered by the Civil Aviation Authority, a person referred to in section 54 subsection (1) may enter into any aircraft or premises, search any such aircraft or premises, examine any object, make copies of or take extracts from any book or document or seize anything.

(2) (a) For purposes of gathering evidence with the view to prosecuting any person for a contravention of any legislation administered by the Civil Aviation Authority a person referred to in section 54 subsection (1) shall not exercise any power to enter any aircraft or premises, search any aircraft or premises, examine any object, make copies of or take extracts from any book or document, or seize anything unless such person has obtained a warrant permitting any such action from a judge of the High Court or a magistrate who has jurisdiction in the area where the aircraft or premises are situated, and such warrant shall 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 thereunder by the person to whom it is issued.

(2) (b) The proviso to paragraph (a) shall not apply where the person concerned is on reasonable grounds of the opinion 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.

(3) A warrant contemplated in subsection (2) shall only be issued if it appears to the judge or magistrate 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.

(4) A warrant may be issued on any day and shall be in force until-

(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.

(5) (a) 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: Provided that such person shall first audibly demand admission and state the purpose for which he or she seeks entry.

(5) (b) The proviso to paragraph (a) shall not apply where the person concerned is on reasonable grounds of the opinion 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.

(6) A warrant issued in terms of this section shall be executed by day unless the person who issued it authorises the execution thereof by night at times which in the circumstances are reasonable.

(7) Any person executing a warrant in terms of this section shall immediately before commencing with the execution-

(a) identify himself or herself to the 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; and

(b) supply such person at his or her request with particulars regarding his or her authority to execute such warrant.

(8) The powers of authorised officers and inspectors designated in section 54(1)(a) are as prescribed.

(9) The powers of authorised persons designated in section 54(1)(b) are as prescribed.

**61     Grounding of Aircraft and closing of facility by authorized officer or inspector**

(1) In addition to any specific power granted to or duty imposed on an authorised officer or inspector under this Act or Regulations, such authorised officer or inspector may if it appears to him or her that any aircraft is intended or likely to be flown in such circumstances that-

(a) the flight would involve a contravention of the Act;

(b) the flight will be a cause of imminent danger to persons in the aircraft or to persons or property on the ground, he or she may:

(i) ground any aircraft which he or she reasonably believes to be unsafe, not duly registered or not airworthy; or

(ii) close any aviation related facility which he or she reasonably believes does not comply with the Act.

(2) If an aircraft has been grounded pursuant to the provisions of this section the aircraft shall not be operated until the Director, being satisfied that the provisions of the Act are being complied with, approves, or until such alterations or repairs have been effected which the Director deems necessary to render such aircraft fit for flight.

**62 Prohibition on the exercising of certain privileges of any aviation certificate, permit or authorization by authorised officers or inspectors**

(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-

(a) the flight would involve a contravention of the 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 such permit, certificate or authorisation to exercise the privileges of such permit, certificate or authorisation.

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

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

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

## CHAPTER SEVEN

### PART ONE

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

63 **Definition of decision and procedural rights**

- (1) In this Chapter "**decision**" has the same meaning as in section 1 of the Promotion of Administrative Justice Act, 2000 (Act No 3 of 2000).
- (2) Any person taking an administrative decision in terms of the Act which may detrimentally affect the rights of a person, must give such person -
- (i) adequate notice of the nature and purpose of the proposed administrative action;
  - (ii) a reasonable opportunity to make representations;
  - (iii) a clear statement of the administrative action;
  - (iv) adequate notice of any right of internal appeal; and
  - (v) the reasons for the administrative action within 7 days after the administrative action was taken.

64 **Appeal against decisions of authorised officers, authorized persons and inspectors**

- (1) Any person aggrieved in respect of any decision by an inspector, authorised officer or authorized person in terms this Act may file a written appeal with the Director within 30 days after the furnishing of reasons for the decision.
- (2) The Director shall within three days of receiving such appeal in writing confirm or amend the decision or withdraw it and make a new decision
- (3) The Director must within 14 days furnish written reasons to the appellant for any decision taken in terms of subsection (2).
- (4) Any person aggrieved by a decision taken in terms of subsection (2) may appeal against such decision within five days after receipt of the reasons referred to in subsection (3) to an appeal committee established in section 68.

(5) In adjudicating the appeal the Director may afford the appellant-

- (a) a reasonable opportunity to make representations;
- (b) the opportunity to present and dispute information and arguments;  
and
- (c) to appear in person.

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

**65 Appeal against the refusal, cancellation, endorsement of a medical certificate or declaration of unfitness**

(1) An applicant for, or the holder of a medical certificate who feels aggrieved by-

- (a) a decision by the designated body or institution to cancel his or her medical certificate;
- (b) a decision by a designated aviation medical examiner, declaring him or her unfit or temporarily unfit;
- (c) any endorsement made by the designated body or institution on his or her medical certificate; or
- (b) any endorsement made a designated aviation medical examiner on his or her medical certificate,

may appeal against such decision or endorsement to the Director within 60 days after receipt of the reasons for the decision after or when he or she becomes aware of such decision or endorsement.

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

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

(4) After considering an appeal the Director shall, provided that the panel of medical practitioners agrees with him or her, confirm the decision in respect of

which the appeal was lodged or give such other decision as he or she may deem equitable.

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

(6) Subject to the provisions of this subsection, such an appeal shall 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 shall *mutatis mutandis* apply to an appeal in terms of this subsection.

(7) The person appealing shall be entitled to be represented at an appeal by an advocate or an attorney.

(8) The procedure for the lodging and prosecution of appeals in terms of this section is as prescribed.

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

#### **66 Appeal against decisions of the Director**

(1) Any person aggrieved in respect of any decision taken by the Director other than in subsection (2) of section 67 may file a written appeal with the appeal committee against such decision within five days after receipt of the reasons for the decision.

(2) The procedure for the lodging and prosecution of appeals in terms of this section is as prescribed.

#### **67 Appeal against decisions of the Minister**

(1) Any person aggrieved in respect of any decision taken by the Minister in terms of this Act may file a written appeal with the appeal committee against such decision within 30 days after receipt of the reasons for such decision.

(2) The procedure for the lodging and prosecution of appeals in terms of this section is as prescribed.

## CHAPTER SEVEN

### PART TWO

#### APPEAL COMMITTEE

##### 68 **Appointment of appeal committee**

- (1) The Minister shall appoint an appeal committee consisting of three part-time members to consider and decide appeals.
- (2) The appeal committee consists of-
  - (a) a person with not less than ten years experience as an attorney or advocate, who is the presiding officer; and
  - (b) two other persons.
- (3) In appointing the members in subsection (2) subparagraph (b) the Minister shall have regard to such persons technical knowledge, experience in a field related to aviation or any special skills, qualifications, expertise or experience in matters concerning aviation.
- (4) 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 or a member of any committee of the Civil Aviation Authority Board shall not be appointed as a member of an appeal committee.
- (5) A person appointed under subsection (1) shall be disqualified as a member of the appeal committee if he or she has any direct or indirect personal interest in the outcome of that appeal.

##### 69 **Conditions of service, remuneration and allowances of members of appeal committee**

- (1) The period and conditions of office, remuneration and allowances of the members of the appeal committee are as prescribed by the Minister with the approval of the Minister of Finance.
- (2) The Minister may at any time withdraw the appointment of a member of the appeal committee if there is sufficient reason for doing so.
- (3) A member of the appeal committee may resign by notice in writing to the Minister.

**70 Quorum and meetings of appeal committee**

- (1) All the members of the appeal committee shall constitute a quorum for any meeting of the appeal committee, and a decision of the majority of the members thereof shall be a decision of the appeal committee.
- (2) 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.

**71 Decisions of the appeal committee**

The appeal committee may confirm, vary or set aside any decision against which an appeal has been lodged in terms of this Chapter.

**72 General provisions regarding the appeal committee**

- (1) The appeal committee 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 timeously to 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) The decision of the committee shall be in writing, and a copy thereof shall be furnished to the Director and the appellant.

- (3) Any decision signed by the Chairperson of the appeal committee shall be regarded as a decision of the appeal committee.
- (4) The Chairperson of the appeal committee must maintain a record of the proceedings.
- (5) Subject to the provisions of this Act, no person is excused from complying with any of the provisions of this Act on the ground that an appeal is pending in terms of this section.
- (6) An appeal in terms of subsection (1) does not suspend the administrative decision, unless it is suspended by the Director or the Minister, as the case may be.
- (7)(a) If during the hearing of an appeal the presiding officer dies or becomes unable to act as presiding officer-
  - (i) the hearing may, with the consent of the appellant proceed before another presiding officer and members concerned; or
  - (ii) the hearing shall start de novo if the consent contemplated in subparagraph (i) is not given.
- (7)(b) If during the hearing of an appeal a member of the appeal committee dies or becomes unable to act-
  - (i) the hearing may, with the consent of the appellant, proceed before the presiding officer concerned and the remaining members; or
  - (ii) the hearing shall start de novo if the consent contemplated in subparagraph (i) is not given.
- (8) The person appealing shall be entitled to be represented at an appeal before the appeal committee by an advocate or an attorney.

### 73 **Appeal against the decision of the appeal committee**

- (1) Any person affected by a decision of the appeal committee may appeal to any provincial or local division of the High Court having jurisdiction.
- (2) Subject to the provisions of this subsection, such an appeal shall 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 shall *mutatis mutandis* apply to an appeal in terms of this subsection.

74 **Administrative work of appeal committee**

The administrative work of the appeal committee must be performed by such employees of the Department, designated for such purpose by the Director General: Transport.

## CHAPTER EIGHT

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

#### 75 Procedures for the identifying and notifying of differences

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

#### 76 Issuance of exemptions by Director

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

(2) In exempting such person or body the Director shall have regard to-

(a) the reasons for the required exemption;

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

(d) 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 disposal.

(3) The Director may not grant any exemption in subsection (1) for a longer period than 90 days which period the Director may on application in writing extend for a further period not exceeding 90 days.

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

#### 77 Compliance with Annex 2 of the Convention in respect of Marshalling Signals, Interception Maneuvers and Orders

(1) Any South African aircraft shall comply with any signal, interception order or maneuvers issued by any State in compliance with Annex 2 of the Convention.

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

## CHAPTER NINE

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

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

(1) Notwithstanding the provisions of 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 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 of Article 12, 30, 31 and 32(a) of the Convention as state of Registry in respect of a South African aircraft.

(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 utilized by a South African Operator.

(3) 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 of the International Civil Aviation Organization and made public pursuant to Article 83 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.

(4) The Director shall, 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, recognize the validity of licences and certificates issued by such contracting State.

(5) The recognition 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 the Operator, the acceptance of the tasks and functions of a State of registry from another State and the provision of information of the International Civil Aviation Organization (ICAO) and other states concerned with transfer arrangements.

## CHAPTER TEN

### OFFENCES AND PENALTIES

#### 79 Offences and penalties

- (1) A person who -
  - (a) on board any aircraft in flight
    - (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 crewmember, which is likely to endanger the safety of that aircraft;
    - (iii) wilfully interferes with any member of the crew of that aircraft in the performance of his or her duties;
  - (b) 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 in flight;
  - (c) 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, which renders it incapable of flight or is likely to endanger its safety in flight;
  - (d) destroys or wilfully damages air navigation facilities or wilfully interferes with their operation which interference is likely to endanger the safety of aircraft in flight;
  - (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 facility;

(g) with the intention to jeopardize the operation of an air carrier or the safety of an airport, heliport, aircraft in service or of persons or property thereon or therein contaminate any aviation fuel;

(h) commits an act at an airport, which causes or is likely to cause serious injury or death;

(i) 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

(j) performs any other act which jeopardizes or may jeopardize the operation of an air carrier or the safety of an airport, heliport, aircraft in service or of persons or property thereon or therein or which may jeopardize good order and discipline at the airport, heliport or on board an aircraft in service;

is guilty of an offence and liable on conviction to imprisonment for a period of not less than five years.

**80 Interference with the operation of an air carrier, airport or heliport**

(1) A person who interferes or threatens to interfere with the operation of an air carrier, airport or heliport by -

(a) threatening, attempting or conspiring to commit any offence referred to in subsection (1) or by falsely alleging that any other person has committed or is about to commit any such offence; or

(b) communicating information which he or she knows to be false or incorrect,

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

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

(1) A person who on board any aircraft in service commits any nuisance, disorderly or indecent act or is in a state of intoxication or behaves in a violent manner towards any person on board any aircraft or utters a threat to anyone on the aircraft, is guilty of an offence and on conviction liable to a fine or imprisonment for a period not exceeding six months or both.

- (2) Any person who on board any aircraft in service
- (a) causes damage to, or destroys property which is likely to endanger the safety of the aircraft or of any person on board the aircraft; or
  - (b) jeopardizes the good order and discipline which is likely to endanger the safety of the aircraft or of any person by such act,
- is guilty of an offence and on conviction liable to a fine or imprisonment for a period not exceeding ten years or both such fine and imprisonment.

**82 Smoking on board an aircraft**

- (1) Any person who on board an aircraft -
- (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
  - (d) refuses to obey a lawful instruction given by the 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.

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

- (1) Any person who within an aerodrome and without due authority -
- (a) wilfully tampers, opens, damages, wilfully destroys, wilfully interferes with the conveyance of cargo, baggage, mail or other goods, makes away with or interferes with such cargo, baggage, mail or other goods;
  - (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 not addressed to or intended for either of them,

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 a fine and such imprisonment.

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

(1) A person may not at an airport 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 permission.

(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 must be consigned, the provisions of such regulation must have preference in the case of a conflict between any requirement of, or any condition stipulated by such operator and another regulation.

(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 jeopardize the safety of the aircraft or interfere with the flight of the aircraft; or

(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.

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

(1) No person may 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 if that person is-

- (a) an authorised person;
  - (b) authorised in writing by the airport manager concerned to be in that restricted area; or
  - (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 in which a harmful article is, 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.
- (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) a person may, while he or she is within the restricted area, perform or attempt to perform any act which may jeopardize 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
  - (b) an occurrence which may jeopardize the safety of the designated airport or of any aircraft, aviation facility or air traffic service Unit, or which may interfere with the operation thereof, may eventuate from such person, baggage, personal effects, mail, cargo, vehicle or other goods entering the restricted area.
- (3) A person to whom, and a person who has a legal interest in any baggage, 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 deem fit.

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

- (1) No person may have access to any aviation facility or air navigation facility without a permission of a person in control of that aviation facility or air navigation facility subject to such conditions as such person may stipulate.
  - (2) A person in control of any aviation facility or air navigation facility may refuse access thereto of any person, personal effects and goods if in his or her opinion
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(a) a person concerned 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 jeopardize the safety of the aviation facility or air navigation facility or any contents thereof, or which may interfere with the operation thereof; or

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

(3) Any person who contravenes any provision of, or who fails to comply with any provision of section 84, 85 or 86 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 for a period of imprisonment not exceeding thirty years or both to such fine and such imprisonment.

**87 Prohibition of conveyance of armaments, drugs or animal products in aircraft**

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

(2) An aircraft which is upon reasonable grounds believed to be engaged in conveying any armaments, drugs or animal product contrary to the provisions of subsection (1), shall be 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 the Convention on Offences and certain other Acts committed on board Aircraft, 1963, entered into on 14 September 1963 at Tokyo.

(3) Any authorised person, may, without derogating from any power which he may have under the Criminal Procedure Act, 1977 (Act 51 of 1977), at any aerodrome or place in the Republic, without a warrant-

(a) search any aircraft which he reasonably believes to be used or to have been used to convey any armaments, drugs or animal product contrary to the provisions of subsection (1) of this section, and any cargo or goods on board such an aircraft;

(b) seize-

(i) any armaments, drugs or animal product found during a search carried out under paragraph (a) of this subsection;

- (ii) any aircraft on which such armaments, drugs or animal product is found; and
    - (iii) any other thing which in his opinion was used or is intended to be used for the commission, or in connection with the commission, of an offence under this section; and
  - (c) arrest any person who is found on board an aircraft contemplated in paragraph (a) of this subsection and whom he reasonably suspects of having committed an offence under this section or of attempting to commit such an offence, and the provisions of section 99(2) of this Act, shall *mutatis mutandis* apply for the purpose of his effecting the arrest.
- (4) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction to imprisonment without the option of a fine for a period not exceeding ten years.
- (5)(a) Any armaments, drugs, animal product, aircraft or other thing seized under subsection (3) (b) shall be forfeited to the State unless the court at the trial of any person accused of the contravention concerned of subsection (1), finds-
- (i) in the case of such armaments, drugs or animal product, that they were not conveyed contrary to the provisions of the last-named subsection and were not intended to be used for any unlawful purpose; or
  - (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.
- (5)(b) Anything forfeited in terms of paragraph (a) shall be disposed of as the Minister may either generally or in a particular case order.
- (5)(c) The provisions of paragraph (a), in so far as they relate to an aircraft, shall not affect the rights which any person other than a person accused of the contravention concerned of subsection (1) may have to such an aircraft, if he, within thirty days of the seizure thereof, satisfies the Minister, by means of proof in writing submitted through the Director-General: Transport, that he 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 could not prevent such use.
- (6) (a) For the purposes of this section-

- (i) 'animal product' means a rhinoceros horn, an elephant tusk or a part thereof which is possessed contrary to the provisions of any other law;
- (ii) 'drugs' means a drug as defined in section 1 of the Drugs and Drug Trafficking Act, 1992 (Act 140 of 1992), that has not been acquired, bought or possessed lawfully as contemplated in section 4 of the said Act.

(6) (b) For the purposes of this section the expression 'armaments' bears the meaning assigned thereto in section 1 of the Armaments Development and Production Act, 1968 (Act 57 of 1968), but with the exception of any such armaments while being conveyed in an aircraft-

- (i) on behalf of the State;
- (ii) by or on behalf of-
  - (aa) the Armaments Corporation of South Africa, Limited, established by section 2 of the Armaments Development and Production Act, 1968, 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 capacity as an officer or employee of the State;
  - (cc) any person for the purposes of the Defence Act, 2002 (Act 42 of 2002); or

any person who is entitled by virtue of the Firearms Control Act, 2002 (Act 60 of 2002), to possess the armaments concerned or to have the armaments concerned in his custody.

## 88 **Threat to security**

- (1) If the Minister is of the opinion that any action by any person or any group of persons is of such a nature that the safety 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 the purpose, may issue such orders as may be deemed necessary to any person or group of persons to counter such action.
- (2) An authorised person may take such steps as he or she deem 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.

(4) The Minister may, to such extent as he or she may determine, with the concurrence of the Minister of Finance, compensate out of the State Revenue Fund any person who satisfies him or her that he or she has suffered any damage or bodily harm, or has incurred costs, in the execution of any order issued in terms of subsection (1).

89 **Penalties for contraventions other than section 79 to 88, 95, 98, 99, 105 and 106**

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

(2) If a person referred to in subsection (1) is the holder of a licence, certificate or rating issued under this Act, the court convicting him may, in addition to any penalty which may be imposed under subsection (1), cancel, suspend for a specified period, or order the endorsement of, such licence, certificate or rating, or, if he is not the holder of any such licence, certificate or rating, declare him to be disqualified from holding any licence, certificate or rating under this Act for such period as the court deems fit.

(3) This section shall apply equally to the owner of an aircraft and to the pilot or person in charge thereof, unless the owner (except in the case of a licensee as defined in section 1 of the Air Services Licensing Act, 1990, or in section 1 of the International Air Services Act, 1993 (Act 60 of 1993)) proves to the satisfaction of the court that the contravention, offence or failure in question occurred without his order, permission or connivance.

(4) The penalties provided in this Act shall be in addition to and not in substitution for any penalties imposed under any customs law or regulation relating to the importation or exportation of goods, and to persons entering or leaving the Republic by aircraft.

## CHAPTER ELEVEN

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

#### 90 Delegation of powers

The Minister may delegate to the Director or an employee of the Department, any power conferred upon him or her by section 95(2), (6) and 88 (1).

#### 91 Acts or omissions taking place outside the Republic

(1) Any action or omission on board of a South African registered aircraft outside the Republic, which would constitute an offence if taking place in or over the Republic, shall constitute that offence.

(2) Any act contemplated in section 79, 80, 81 and 82 and 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 79 (1) (a) (i) is deemed to have been committed also in the Republic -

(a) if such aircraft lands in the Republic with the person who committed any such act, still on board;

(b) if such aircraft is leased without crew to lessee with a 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.

#### 92 Jurisdiction

Any offence contemplated in section 91 (2) shall for the purposes of jurisdiction be deemed to have been committed in any place where the accused happens to be, or is found.

#### 93 Extradition

(1) 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 -

- (a) any aircraft registered in any convention country shall, at any time while that aircraft is in flight, be deemed to be within the jurisdiction of that particular country, irrespective of whether or not it is for the relevant time being also within the jurisdiction of any their country;
- (b) the landing of such aircraft in any other convention country with the offender still on board will result in the offence being deemed also to have been committed also in that country;
- (c) where the aircraft was leased without crew to a lessee who has principal place of business or permanent residence in any other convention country, the offence shall be deemed also to have been committed in that country.

94     **Admissibility of certain statements**

(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 shall be admissible as evidence provided it is made on oath by that person -

- (a) to an officer having functions corresponding to the functions, in the Republic, either of a judge or of a magistrate or of a consular officer; and
- (b) in the presence of the person charged with the offence.

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

(3) It shall not be 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 shall, unless the contrary is proved, be sufficient evidence in any proceedings that the person charged with the offence was present at the making of the statement.

## CHAPTER TWELVE

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

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

(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.

(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 such imprisonment.

(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 is of the opinion that it is necessary for the security of the airport that a person, vehicle or the baggage or personal effects of a person, who intends to enter a restricted area, or that any vehicle or cargo which is, or any 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.

(6) The Minister may direct the manager of any airport, or the manager of any organization conducting any business at any particular airport, that any person, vehicle or the baggage or personal effects of any person, who enters 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.

(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 such imprisonment.

(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 or part thereof, vehicle, cargo, goods or aircraft,

(9) Any authorised person may without a warrant search any aviation facility or any contents thereof, or any person, vehicle or article found thereat, 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.

(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 maybe, and not to return thereto for a specified period, which period may not exceed twenty-four hours.

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

(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 such imprisonment.

(13) Any search must be conducted with strict regard to decency and order. A woman may only be searched by a woman, and if no female authorised person is available, a woman designated for the purpose by an authorised person must conduct the search.

**96 Seizure or retention of harmful articles**

(1) An authorised person may seize any harmful article found during a search carried out under section 95 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.

(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, 1977 (Act No. 51 of 1977), and must be dealt with and be disposed of under the provisions of that Act as if it were an article seized, and delivered to such police official under that Act.

**97 Powers of arrest of authorised person**

(1) An authorised person may without a warrant arrest any person who has committed or is suspected to have committed any offence referred to in this Act.

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

**98 Call for identification**

(1) An authorised person or an employee with the written authorization 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 deems 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.

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

## CHAPTER THIRTEEN

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

#### 99 Powers on board an aircraft

(1) The commander of an aircraft in flight shall, when on reasonable grounds believe that any person on board the aircraft has done or is about to do any act, which jeopardizes or may jeopardize the safety of the aircraft, the safety of persons or property on board or the good order and discipline on board the aircraft or has committed any act which in the opinion of the commander is a serious offence under the law in force in the country in which the aircraft is registered, the commander shall take such reasonable measures, including restraint of that person, as may be necessary -

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

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

(c) to enable him or her to disembark or deliver that person in accordance with the provisions of subsection (4).

(2) Any person on board the aircraft may render assistance in restraining any person whom the commander is entitled to restrain under subsection (1) and may, without the authorization of the commander, take in respect to any person on board the aircraft any reasonable measures which he or she believe, on reasonable grounds, that are necessary to protect the safety of the aircraft or of persons or of property on board the aircraft.

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

(a) for the purposes of disembarking and or delivering such person under restraint to the appropriate authorities in terms of subsection (4); or

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

(4) The commander of an aircraft may, in relation to the person mentioned in sub section (1), -

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

(b) deliver that person -

- (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.
- (5) The commander of an aircraft -
  - (a) who disembarks a person in terms of subsection (4) must report the disembarkation and the reasons thereof, to appropriate authority in the country of disembarkation and the diplomatic or consular offices of the country of nationality of that person;
  - (b) if he or she intends to deliver such a person to the officer as indicated in subsection (4) (b), must give notice of his or her intention including the reasons therefore, to that officer, before or as soon as reasonably practicable after landing.
- (6) 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 liable to a fine or imprisonment for a period not exceeding six months or both.
- (7) Nothing in this section contained shall prejudice the admission as evidence of any statement which is admissible in evidence apart from this section.

## CHAPTER FOURTEEN

### CIVIL AVIATION SECURITY

#### 100 Appointment of National Civil Aviation Security Coordinator

(1) The Minister shall appoint the first National Civil Aviation Security Coordinator who shall be the current Chief: Civil Aviation Security who shall be an employee of the Department.

(2) In the exercise of the powers and performance of duties referred to in this Act the National Civil Aviation Security Coordinator is accountable to the Director General of the Department.

(3) The National Civil Aviation Security Coordinator holds his or her office for a period, not exceeding three years, on the conditions, including conditions providing for remuneration and allowances the Public Service Commission determines upon his or her appointment.

(4) Any further appointment of a National Civil Aviation Security Coordinator shall be done by the Director General of the Department.

(5) The National Civil Aviation Security Coordinator may be reappointed at the expiry of his or her term of office.

(6) The National Civil Aviation Security Coordinator holds office on a full-time basis.

(7) The National Civil Aviation Security Coordinator shall-

- (a) be a South African citizen;
- (b) be a fit and proper person to hold such office; and
- (c) have a top security clearance.

(8) The National Civil Aviation Security Coordinator 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.

**101 Conflict of Interest**

The National Civil Aviation Security Coordinator 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 Department during business hours.

**102 Responsibilities**

(1) Subject to the provisions of the Act the National Civil Aviation Security Coordinator is responsible for-

- (a) the development of national civil aviation security policies pertaining to civil aviation;
- (b) the compilation and revision and co-ordination of the National Aviation Security Plan (NASP) in compliance with Annex 17 to the Convention;
- (c) developing effective enforcement strategies to secure compliance with aviation security standards;
- (d) assessment of security related decisions taken by industry at all levels for the impact on aviation security;
- (e) conducting regular reviews of the system of civil aviation security in order to monitor the security performance of the aviation industry, to identify security-related trends and risk factors and to promote the development and improvement of the system;
- (f) conducting regular and timely assessment of international security developments; and

**103 Determinations by Minister**

(1) The Minister may determine, in addition to the company airports as defined in section 1 of the Airports Company Act, 1993 which airports are to be designated as designated airports.

(2) The Minister must, with the concurrence of the National Civil Aviation Security Coordinator and the Chief Executive Officer of the relevant designated airport, and in consultation with the Civil Aviation Authority approve the appointment of the person responsible for the execution of the security plan of such airport.

(3) Any person appointed in terms of subsection (2) or employed in an executive capacity charged with any aviation security responsibilities shall be a South African citizen.

## CHAPTER FIFTEEN

### LEVIES

#### 104 Levies

- (1) Subject to subsections (2), (5) and (6) the Civil Aviation Authority may make determinations-
  - (a) imposing levies on participants and specifying the persons by whom, and the times when, such levies are payable;
  - (b) fixing penalties for the non-compliance with the payment of any levies determined in paragraph (a) of subsection (1).
- (2) The Civil Aviation Authority must give the Minister notice in writing of a proposed determination before making a determination in terms of subsection (1)-
  - (a) specifying the day from which the determination is intended to operate;
  - (b) if it imposes a levy or fixes a penalty, specifying the basis of such levy or penalty; and
  - (c) if it varies a levy or penalty, specifying the reason for the variation.
- (3) The Minister, acting in consultation with the Minister of Finance, must within a period of 60 days after receiving a notice contemplated in subsection (2), in writing, give the Civil Aviation Authority notice approving or not approving the proposed determination, and in the case of not approving that determination, also give reasons for his or her decision.
- (4) A notice by the Minister contemplated in subsection (3) disapproving a proposed determination may recommend an alternative determination.
- (5) The Civil Aviation Authority may make a determination under subsection (1) only-
  - (a) after the Minister has approved that determination; or
  - (b) if the Minister has failed to give notice to the Civil Aviation Authority within 60 days as contemplated in subsection (3).

(6) A determination made in terms of subsection (1) must be published in the *Gazette* at least 30 days before the commencement of that determination.

(7) The power to make a determination in terms of subsection (1) includes the power to amend or withdraw a determination.

#### 105 Penalties in connection with levies

(1) Subject to subsection (2), where a levy imposed under section 104 (1) is not paid within the period determined by the Civil Aviation Authority, being a period beginning on the day on which the levy became due and payable, the person liable for the payment of the levy is liable to pay to the Civil Aviation Authority, in addition to the levy, a penalty calculated upon the unpaid amount of the levy from the date on which the levy became due and payable, and compounded.

(2) The penalties fixed under subsection (1) may not exceed an amount equivalent to the percentage prescribed by regulation of the unpaid amount of the levy for each day during which it remains unpaid, calculated from the date on which the levy became due and payable, and compounded.

(3) Levies and penalties may be recovered as debts due to the Civil Aviation Authority.

## CHAPTER SIXTEEN

### REGULATIONS

#### 106 Regulations

- (1) The Minister may make regulations regarding-
  - (a) subject to section 3 (1) (a), the carrying out of, or the giving effect to, the provisions of the Convention and the 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;
  - (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-
    - (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;
  - (e) the designation of one or more body or institution for the purposes of this Act-
    - (i) to exercise control over medical examinations or tests and over the persons performing such examinations or tests;
    - (ii) to determine standards for such examinations or tests and for the training of such persons;
    - (iii) to issue, to amend, to suspend or to withdraw medical certificates and to keep all books or documents regarding such examinations or tests; and

- (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;
- (f) the designation of one or more body or institution for the purposes of this Act-
  - (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;
  - (ii) to determine standards for such courses, tests or verifications and for the training of such persons;
  - (iii) to issue or to 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;
- (g) the designation of one or more body or institution for the purposes of this Act-
  - (i) to exercise control over the aviation recreational activities specified in the regulations;
  - (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;
- (h) the designation of one or more body or institution for the purposes of this Act-
  - (i) to promote aviation safety or to reduce the risk of aircraft accidents or 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 incidents;

(i) the reporting or the investigation of aircraft accidents or incidents, including-

(i) the persons by whom or to whom such accidents or incidents shall be reported;

(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 incident and the granting of authorization 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 the preservation thereof or to deal otherwise therewith; and

(iv) the investigation of any other accident or incident reported in respect of the provision of any air traffic service;

(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;

(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 71 of 1962), or any fish as defined in section 1 of the Marine Living Resources Act 1998 (Act 18 of 1998);

(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 shall land and the conditions under which, the airspace within which or the aerodromes from which aircraft shall depart to any place outside the Republic; and
- (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 any provision of this Act;
- (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;
  - (ii) the identification, the classification or the registration of aircraft;
  - (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;
  - (v) the approval or, where appropriate, the design of let-down and missed approach procedures;
  - (vi) the safety or the security of persons and property, including the conditions under which any aircraft shall 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;
  - (vii) the signals or other communications which may or shall 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 co-ordination of frequency allocations in bands of the radio spectrum allocated for civil aviation use;

- (ix) the determination of standards for the maintenance of any air navigation infrastructure; and
  - (x) the flight inspection of any such air navigation infrastructure;
- (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;
  - (ii) the imposition of a prohibition or the regulation of the use of unlicensed aerodromes;
  - (iii) the approval for the citing of any air navigation infrastructure which is not situated on an aerodrome;
  - (iv) the certification of categories of operations at aerodromes;
  - (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;
  - (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;
  - (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 shall be kept;
  - (x) the technical, operational, security, safety and environmental management and protection standards in respect of a company airport as defined in section 1 of the Airports Company Act, 1993 (Act 44 of 1993) and designated airports, and

- (xi) the identification, licensing and certification of any persons engaged in any safety related activity on an aerodrome
- (o) the provision or the organization 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 organizations and aviation training organizations and the designation of aviation meteorological organizations;
- (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;
  - (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 shall be applied, in the construction of aircraft, aircraft components or aircraft equipment; and
  - (iii) the determination of standards for the training, the grading, the licensing or the certification of persons engaged in any such activity;
- (q) the manner in which, or the conditions under which, any licence or certificate required by or under this Act, the Convention or the Transit Agreement shall be issued, renewed or confirmed, including-
  - (i) the courses, the examinations, the inspections, the tests or the verifications which shall be passed or measured up to; and
  - (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 the Transit Agreement and the manner in which they shall be kept;
- (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 the 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;
- (v) The Minister may make regulations with regard to the following matters concerning the staff of the Aviation Accident Investigation Agency:
  - (i) The different categories of salaries and scales of salaries which shall apply to the different categories of staff;
  - (ii) the requirements for appointment, promotion, discharge and disciplinary steps;
  - (iii) the recognition of appropriate qualifications and experience for the purposes of appointment to a specific post;
  - (iv) the procedure and criteria for evaluation, and the conditions or requirements for promotion;
  - (v) the powers, duties, conduct, discipline, hours of attendance and leave of absence, including leave gratuity, and other conditions of service;
  - (vi) the creation of posts on the establishment of the Aviation Accident Investigation Agency;
  - (vii) the training of staff, including financial assistance for such training;
  - (viii) a code of conduct to be complied with by staff;
  - (ix) the provision of official transport;
  - (x) the conditions on which and the circumstances under which remuneration for overtime duty and travel, subsistence, climatic, local and other allowances may be paid;

- (xi) subject to section 20, the legal liability emanating from the use of official transport;
- (xii) 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;
- (xiii) the procedure for dealing with complaints and grievances of members of staff and the manner in which and time when or period wherein and person to whom documents in connection with requests and communications of such members of staff shall be submitted;
- (xiv) the membership or conditions of membership of a particular pension fund and the contributions to and the rights, privileges and obligations of members of staff or their dependants with regard to such a pension fund;
- (xv) the membership or conditions of membership of a particular medical aid scheme or medical aid society and the manner in which and the conditions on which membership fees and other moneys which are payable or owing by or in respect of members of staff or their dependants to a medical aid scheme or medical aid society may be recovered from the salaries of such members of staff and paid to such medical aid scheme or medical aid society;
- (xvi) the contribution to and the rights, privileges and obligations of members of staff or their dependants with regard to such a medical aid scheme or medical aid society;
- (w) next-of-kin plans in the event of an airline accident;
- (x) the conditions of insurance in respect of third party liability, that aircraft owners shall insure for in relation to the category of aircraft;
- (y) 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;
- (z) the calculation of aircraft noise contours and the monitoring of aircraft noise;

(aa) any charges, levies or monies that may be charged by the Civil Aviation Authority on-

(i) participants in civil aviation; and

(ii) aircraft passengers;

(bb) 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;

(cc) the drawing-up of plans with regard to measures which shall be adopted in order to promote or ensure the security of civil aviation and the effective application of the provisions of this Act (hereinafter in this subsection referred to as 'security plans'), the approval of security plans and the secrecy thereof;

(dd) 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;

(ee) 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;

(ff) the administrative steps which shall precede the designation by the Minister, in accordance with the provisions of the definition of 'designated airport', of any airport or heliport as a designated airport;

(gg) (i) the part of the expenses incurred in connection with the application of the provisions of a security plan or of this Act which shall 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;

(gg) the levying of charges or 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;

(jj) 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 shall be stored and handled and the admission to aircraft of persons who are under the influence of intoxicating liquor or drugs;

(kk) cargo security;

(ll) procedures to prevent the disruptive or unruly conduct of passengers;

(mm) the designation of the authorities or entities responsible for the provision of aviation services.

(nn) generally, any matter which the Minister may consider necessary or expedient to prescribe in order that the objects of this Act may be achieved, and the generality of this paragraph shall not be limited by the preceding paragraphs.

(3) 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.

(4) A regulation may provide for such incidental, supplementary or transitional matters as may be necessary.

(5) Any regulation-

- (a) only comes into operation on publication in the Gazette; and
- (b) must be tabled in Parliament by the Minister within 14 days of publication as contemplated in paragraph (a) of this subsection, or, if Parliament is not then in session, at the commencement of its next ensuing session.

(6) No fees, rates of compensation or charges or, where applicable, exemption from payment or variation as to the payment of such fees or charges, shall be prescribed or provided for under subsection (1) except after consultation with the Minister of Finance.

(7) Any regulation made under this section may prescribe 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 shall exceed the penalties mentioned in section 89.

## CHAPTER SEVENTEEN

### TECHNICAL STANDARDS

#### 107    **Technical standards for civil aviation**

(1) (a) The Director may issue technical standards for civil aviation on such matters as may be prescribed by regulation.

(1) (b) The manner in which any technical standard for civil aviation shall be issued, amended or withdrawn, and the procedure to be followed in respect of any such issue, amendment or withdrawal, shall be as prescribed by regulation.

(2) The Director may incorporate into a technical standard any international aviation standard or any amendment thereof, 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 shall keep in his 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 shall 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 thereof, at such person's expense, at a place approved by the said officer.

(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 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 shall, on its mere production at those proceedings by any person, be *prima facie* proof of the facts stated therein.

(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;

(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.

## **CHAPTER EIGHTEEN**

### **TRANSITIONAL PROVISIONS AND MATTERS PENDING UNDER PREVIOUS ACT, MATTERS INCIDENTAL, REPEAL OF LAWS AND COMMENCEMENT**

#### **108 Transitional provisions**

(1) Any proclamation and the Regulations made under the Aviation Act 1962, Civil Aviation Offences Act, 1972 and the South African Civil Aviation Authority Act 1998 shall remain in force until replaced by proclamation or regulations, as the case may be, made by virtue of Chapter 16 of this Act

(2) Any authorization, certificate, licence, permission, permits or registration issued in terms of the previous Acts which was valid immediately before the commencement of this Act, remains valid for the period specified in the authorization, certificate, licence, permission, permits or registration, as the case may be, unless terminated, cancelled or suspended in terms of this Act.

(3) Any person who occupied a post or served in a particular capacity in terms of the repealed Acts in Schedule 1 immediately prior to the commencement of this Act continues to occupy or to serve in the corresponding post or capacity designated in this Act.

(4) 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.

#### **109 Matters pending under previous Act**

(1) The promulgation of this Act does not affect any proceedings instituted in terms of the previous Act 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.

(2) 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.

(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.

(5)(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.

(6) Any act relating to administration which has been performed by the Minister in terms of or by virtue of a provision of a law repealed must be deemed to have been performed by the Director.

(7) Any appointment made in terms of any repealed Act shall be deemed to have been done in terms or by virtue of the corresponding provision of this Act.

**110 Amends section 1 of the Air Services Licensing Act 115 of 1990 by substituting the definition of-**

- (a) 'Authority';
- (b) 'authorized person'
- (c) 'authorized officer';
- (d) 'Chief Executive Officer' with 'Director';
- (e) 'Commissioner for Civil Aviation' with 'Director'; and
- (f) 'inspector'

**111 Amends section 1 of the Convention On The International Recognition of Rights in Aircraft Act 59 of 1993 by substituting the definition of 'Commissioner for Civil Aviation' with 'Director'.**

112 **Amends section 1 of the International Air Services Act 60 of 1993 by substituting the definition of-**

- (a) 'airport';
- (b) 'authorized officer';
- (c) 'authorized person';
- (d) 'Commissioner for Civil Aviation' with 'Director'; and
- (e) 'inspector'

113 **Amends section 1 of the Convention On The International Recognition Of Rights In Aircraft Act 59 of 1993 by substituting the definition of 'Commissioner for Civil Aviation' with 'Director'.**

114 **Repeal of laws**

The laws specified in Schedule 1 are hereby repealed to the extent set out in the third column of that Schedule.

115 **Act binding on State**

This Act shall bind the State.

116 **Short title and commencement**

(1) This Act shall be called the Civil Aviation Act, 2008 and shall come into operation on a date to be fixed by the President by Proclamation in the *Gazette*.

(2) Different dates may in terms of subsection (1) be fixed in respect of different provisions of this Act.

**Schedule 1****LAWS REPEALED**

<b>No and year of Law</b>	<b>Short title</b>	<b>Extent</b>
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
Act 41 of 1998	South African Civil Aviation Authority Levies Act, 1998	The whole

**Schedule 2****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

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;

Have accordingly concluded this Convention to that end.

**PART I**  
**AIR NAVIGATION (articles 1-42)**  
**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.

**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.

**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.

(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.

**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.

(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 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.

(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.

(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.

#### 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.

## 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.

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.

#### 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.

#### 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.

#### 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.

#### Article 9

Prohibited areas - (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.

(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.

(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.

#### 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.

## 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 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.

### 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.

##### 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.

##### Article 20

Display of marks - Every aircraft engaged in international air navigation shall bear its appropriate nationality and registration marks.

**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.

**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.

**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.

**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.

(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.

## 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.

## 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.

## 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.

(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 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.

#### Article 28

##### Air navigation facilities and standard systems

Each contracting State undertakes, so far as it may find practicable, to-

(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;

(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;

(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.

## CHAPTER V

### CONDITIONS TO BE FULFILLED WITH RESPECT TO AIRCRAFT (articles 29-36)

#### Article 29

##### 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;
- (b) its certificate of airworthiness;
- (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;
- (f) if it carries passengers, a list of their names and places of embarkation and destination;
- (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.

(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

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.

(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

##### 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.

#### 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.

#### Article 35

##### Cargo restrictions

(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.

(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.

#### 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.

#### 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.

#### Article 42

##### Recognition of existing standards of competency of personnel

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****THE INTERNATIONAL CIVIL AVIATION ORGANIZATION (articles 43-66)****CHAPTER VII****THE ORGANIZATION (articles 43-47)****Article 43****Name and composition**

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**

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;
- (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;
- (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;
- (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

(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;
- (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;
- (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;
- (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.

[Para. (a) amended by Proclamation R204 of 31 August 1973 and by Proclamation 194 of 17 October 1980.]

(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.

#### Article 54

##### Mandatory functions of Council

The Council shall-

- (a) submit annual reports to the Assembly;
- (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;
- (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;
- (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;
- (j) report to contracting States any infraction of this Convention, as well as any failure to carry out recommendations or determinations of the Council;

(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;

(m) consider recommendations of the Air Navigation Commission for amendment of the Annexes and take action in accordance with the provisions of Chapter XX;

(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;

(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;

(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;

(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.

## CHAPTER X

### THE AIR NAVIGATION COMMISSION (articles 56-57)

#### 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. 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:

- (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.

**CHAPTER XI****PERSONNEL (articles 58-60)****Article 58****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.

**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.

**Article 60****Immunities and privileges of personnel**

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****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.

## Article 62

## 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

## 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.

**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.

## 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.

## Article 66

## Functions relating to other agreements

(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.

### **PART III**

## **INTERNATIONAL AIR TRANSPORT (articles 67-79)**

### **CHAPTER XIV**

## **INFORMATION AND REPORTS (articles 67)**

### **Article 67**

#### **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.

### **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.

### **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.

### **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.

### **Article 71**

#### **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.

#### 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.

#### 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.

#### 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.

#### 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.

**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.

**CHAPTER XVI****JOINT OPERATING ORGANIZATIONS AND POOLED SERVICES  
(articles 77-79)****Article 77****Joint operating organizations permitted**

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.

**Article 78****Function of Council**

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**

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)****CHAPTER XVII****OTHER AERONAUTICAL AGREEMENTS AND ARRANGEMENTS  
(articles 80-83bis)****Article 80****Paris and Habana Conventions**

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.

#### 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.

#### 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.

**CHAPTER XXI****RATIFICATIONS, ADHERENCES, AMENDMENTS AND DENUNCIATIONS (articles 91-95)****Article 91****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.

(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.

#### 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.

(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.

#### 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.

#### Article 93bis

##### 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;

(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.

(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.

(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

##### 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.

(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.

#### 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.

(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.

## 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.

(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.

(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.

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.

### **Third Schedule**

#### **INTERNATIONAL AIR SERVICES TRANSIT AGREEMENT**

The States which sign and accept this International Air Services Transit Agreement, being members of the International Civil Aviation Organisation, declare as follows:

#### **ARTICLE I**

##### **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.

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.

##### **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.

##### **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.

##### **Section 4**

Each contracting State may, subject to the provisions of this Agreement:

- (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.

#### 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.

### 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.

IN WITNESS WHEREOF, the undersigned, having been duly authorised, 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.

**Schedule 4**

Convention on International Interests in Mobile Equipment 2007 (Act 4 of 2007)

Convention on the International Recognition of Rights in Aircraft Act 1993 (Act 59 of 1993)

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