

REPUBLIC OF SOUTH AFRICA

CIVIL AVIATION BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 31120 of 4 June 2008)
(The English text is the official text of the Bill)*

(MINISTER OF TRANSPORT)

[B 73—2008]

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BILL

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

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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CHAPTER 1

DEFINITIONS

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Definitions

1. (1) In this Act, unless the context otherwise indicates—
- “**accredited representative**” means a person designated by a State, on the basis of his or her qualifications, for the purpose of participating in an aircraft accident or aircraft incident investigation conducted by another State; 10
- “**aerodrome**” means any demarcated area on land or water or any building which is used or intended to be used, either wholly or in part, for the arrival or departure of an aircraft, and includes any building, installation or equipment within such area which is used or intended to be used in connection with the arrival, departure or movement of an aircraft; 15
- “**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;
- “**aircraft accident**” means any occurrence declared by regulation to constitute an aircraft accident; 20
- “**aircraft incident**” means any occurrence declared by regulation to constitute an aircraft incident;
- “**air navigation facility**” means any premises, structure or place to which the public have restricted access and in which a service is rendered for the operation of a designated airport or for the public at a designated airport, airport or heliport, and includes any aid provided for promotion of the safe, orderly and expeditious movement of air traffic, and, where applicable, any building or structure in or on which such aid or part thereof is housed or attached, and includes the premises on which such aid or part thereof is situated, whether such building, structure or premises is situated within the boundaries of a designated airport, airport or heliport or not; 25 30
- “**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; 35
- “**appeal committee**” means an appeal committee established in terms of section 109;
- “**appointed member**” means a member of the Civil Aviation Authority Board appointed by the Minister in terms of section 82; 40
- “**authorised officer**” means an officer designated in terms of section 94 of this Act;
- “**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); 45
- (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;
- (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); 50
- (d) any person designated in writing by the Director as an authorised person in terms of section 94; or

- (e) any other person appointed in writing by the Minister as an authorised person for the purposes of this Act;
- “authorised security personnel”** means the personnel appointed by the Director in terms of section 94;
- “aviation facility”** means premises for the handling of passengers, cargo, post or baggage, an aircraft hangar, a fuel storage area and any other premises, structure or place to which the public have no right of access and in which a service is rendered for the operation of a designated airport or aircraft or for the public at an airport or heliport, whether such building, structure or premises is situated within the boundaries of the airport or heliport or not;
- “Aviation Safety Investigation Board”** means the Aviation Safety Investigation Board established in terms of section 10;
- “board”** means a board of inquiry appointed under section 68 or 69;
- “Civil Aviation Authority”** means the South African Civil Aviation Authority established in terms of section 70;
- “Civil Aviation Authority Board”** means the Board established by section 79;
- “commander”**, in relation to an aircraft, means the crew member designated as commander of that aircraft by the operator thereof, or, failing such a designation, the person who is at that time the pilot in command of that aircraft;
- “company”** means the company as defined in section 1 of the Airports Company Act, 1993 (Act No. 44 of 1993);
- “Constitution”** means the Constitution of the Republic of South Africa, 1996;
- “Contracting State”** means any State which is a party to the Convention;
- “controlled airspace”** means an airspace of defined dimensions within which an air traffic control service is provided to IFR (Instrument Flight Rules) flights and to VFR (Visual Flight Rules) flights in accordance with the airspace classification as prescribed by regulation;
- “Convention”** means the Convention on International Civil Aviation drawn up in Chicago on 7 December 1944, as set out in Schedule 3, and includes any amendments and additions ratified and proclaimed in accordance with section 3(1)(b);
- “Convention country”** means a country in which the Convention on Offences and Certain Other Acts Committed on Board Aircraft, the Convention for the Suppression of Unlawful Seizure of Aircraft or the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation is in force;
- “Coordinator”** means the National Civil Aviation Security Coordinator appointed in terms of section 141;
- “Criminal Procedure Act”** means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- “Department”** means the National Department of Transport;
- “designated airport”** means any company airport as defined in section 1 of the Airports Company Act, 1993 (Act No. 44 of 1993), and includes any airport, heliport or heliport designated by the Minister in terms of section 4(6);
- “differences”** means the departures from international standards and procedures contained in Article 38 of the Convention;
- “Director”** means the Director of Civil Aviation appointed in terms of section 91;
- “Director-General”** means the Director-General of the Department of Transport;
- “Director of Investigations”** means the Director of Investigations appointed in terms of section 25;
- “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 No. 60 of 2000), and includes any cartridge or projectile intended for use in the discharge of a fire-arm in terms of that Act;
- (b) any firearm as defined in section 1 of the Firearms Control Act, 2000, 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 No. 26 of 1956), including explosives as defined in Article 1 of the Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1999, and includes any article which has the appearance of an explosive or which is marked or labelled that it is or contains an explosive, whether such article is capable of explosion or of being exploded or not; 5
- (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, device or instrument which is reasonably believed to be capable of being used to endanger life or property or any other article which is a dangerous weapon as defined in section 1 of the Dangerous Weapons Act, 1968 (Act No. 71 of 1968); 10
- “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; 15
- “helistop”** means an aerodrome and any defined area or a structure intended or designed to be used either wholly or partly for the landing, departure and surface movement of helicopters;
- “identifying and notifying of differences”** means the process whereby Contracting States in terms of Article 38 of the Convention identify and notify other Contracting States of any differences between national regulations and practices and the international standards contained in the Annexes to the Convention; 20
- “Inquests Act”** means the Inquest Act, 1959 (Act No. 88 of 1959);
- “inspector”** means an inspector designated in terms of section 94;
- “investigator”** means a person appointed under section 25; 25
- “military conveyance”** means the transportation of goods or persons by means of an aircraft that is operated by or on behalf of the Department of Defence or a visiting force;
- “Minister”** means the Minister of Transport;
- “oath”** includes an affirmation or declaration; 30
- “operator”** means a person or artificial entity, holding a valid licence and operating certificate or equivalent thereof authorising such person to conduct scheduled, non-scheduled or general air services and airline, air carrier, air service operator or commercial air transport operator has the same meaning as defined;
- “organ of state”** means— 35
- (a) any national or provincial department;
- (b) a municipality contemplated in section 151 of the Constitution; or
- (c) any functionary or institution exercising a power or performing a function in terms of the Constitution, or a provincial constitution referred to in section 142 of the Constitution; 40
- “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 an 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; 45
- “pilot in command”** in relation to an aircraft, means the person who is in charge of the piloting of the aircraft;
- “political office bearer”** means a member of Parliament, a member of a provincial legislature, a diplomatic representative of the Republic who is not an officer of the State in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994), a member of a municipal council, a member of a house or council of traditional leaders, or any paid official of a political party, alliance or movement; 50
- “premises”** includes any aerodromes, hangars, approved maintenance organisations, workshops, ramps, fuel storage, operator offices, cargo handling areas, vehicles and aviation training organisations; 55
- “prescribed”** means prescribed by regulation;
- “proclamation”** means any proclamation issued under this Act;
- “Protocols”** means the instruments that govern the application of the Convention issued by the International Civil Aviation Organisation and ratified by Member States; 60
- “Public Finance Management Act”** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“Recipient State” means all States that participate in an aircraft accident or aircraft incident investigation including the State instituting the investigation, the State of Registry, the State of the Operator, the State of Design, the State of Manufacture, any State having suffered fatalities or serious injuries to its citizens and any State that provided relevant information, significant facilities or experts; 5

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

“regulation” means any regulation made under this Act; 10

“Republic” means the Republic of South Africa including any territory and territorial waters 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, or in respect of which the Minister has directed the management of the designated airport, or any organisation conducting business at a designated airport, to institute access control and in respect of which access control has been so instituted; 15

“search” with the exception of Chapter 3, includes hand searches of luggage or the use of metal detectors for persons and metal detectors, X-ray equipment and explosive detecting equipment for personal effects, baggage, vehicles, cargo, mail and other goods for the purpose of screening; 20

“serious incident” includes any occurrence declared by regulation to constitute a serious incident;

“South African aircraft” means an aircraft registered in the Republic and includes any aircraft that is operated by joint air transport operating organisations or international operating agencies established by the State and any other convention country and that is declared by the Minister by notice in the *Gazette*, to be a South African aircraft; 25

“State of Design” refers to the state having jurisdiction over an organisation responsible for the type of design of an aircraft; 30

“State of Manufacture” refers to the state having jurisdiction over an organisation responsible for the final assembly of an aircraft;

“State of Occurrence” means the state in whose territory an aircraft accident or aircraft incident occurs; 35

“State of Registry” means the state on whose register the aircraft is registered;

“State of the Operator” means the State in which the operator’s principal place of business is located or, if there is no such place of business, the operator’s permanent residence;

“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; 40

“this Act” includes any Schedule to this Act or regulation made under this Act;

“Transit Agreement” means the International Air Services Transit Agreement drawn up at Chicago on 7 December 1944, and set out in Schedule 4. 45

(2) The definition of “aerodrome” in subsection (1) does not derogate from the ordinary meaning of the word “airport”.

(3) For the purposes of this Act an aircraft is regarded to be in flight—

(a) from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation or, if the aircraft makes a forced landing, until the moment when the competent authorities of the country in which the forced landing takes place, take over the responsibility for the aircraft and for the persons and property on board; or 50

(b) during any period when it is on the surface of the sea or land but not within the territorial limits of any country. 55

(4) (a) For the purposes of this Act an aircraft is regarded to be in service from the start of the pre-flight preparation of such aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing.

(b) The entire period during which the aircraft is in flight in terms of subsection (3) is included for the purpose of paragraph (a). 60

CHAPTER 2

PART 1

**APPLICATION OF ACT, POWER TO CARRY OUT AND APPLY
CONVENTION AND TRANSIT AGREEMENT, FUNCTIONS OF MINISTER
IN CONNECTION WITH ACT AND CONVENTION AND
TRANSIT AGREEMENT** 5

Application of Act

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

Power to carry out and apply Convention and Transit Agreement

3. (1) The Minister, in consultation with the Civil Aviation Authority, may—
- (a) issue proclamations that are reasonable and necessary for carrying out the Convention or the Transit Agreement and for giving effect thereto or to any of the provisions thereof; 45
 - (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 be made; and 50
 - (c) by proclamation in the *Gazette*, declare that the amendments or additions so ratified must be observed and have the force and effect of law in the Republic.
- (2) Copies of any amendments or additions ratified and proclaimed in terms of subsection (1)(b) must be tabled for inspection in Parliament within 14 days after the publication of the relative proclamation in the *Gazette*, if Parliament is in ordinary session or, if it is not in ordinary session, within 14 days after the commencement of its next ensuing ordinary session. 55

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

4. (1) The Minister is responsible for the carrying out of this Act, the Convention and the Transit Agreement.
- (2) Every person appointed under or concerned with the carrying out of this Act, excluding members of the South African National Defence Force or the South African Police Service, must perform his or her functions and exercise any discretion expressly or impliedly vested in him or her in a manner which gives effect to this Act. 5
- (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. 10
- (4) The Minister must designate the Civil Aviation Authority as the appropriate authority for the purposes of carrying out the functions of this Act.
- (5) The Minister must designate the authorities responsible for providing aviation services.
- (6) The Minister may, in addition to the company airports defined in section 1 of the Airports Company Act, 1993 (Act No. 44 of 1993), by notice in the *Gazette*, designate any other airport for the purposes of this Act. 15

Enactment of Convention and Transit Agreement

5. (1) The Convention and the Transit Agreement referred to in Schedules 3 and 4, respectively, have, subject to this Act, the force of law in the Republic. 20
- (2) The Minister may by notice in the *Gazette* amend Schedules 3 and 4 to reflect any changes made to the Convention and the Transit Agreement if those changes are binding on the Republic in terms of section 231 of the Constitution.

CHAPTER 3

PART 1 25

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

Acquisition of land and rights in connection with licensed airports

6. (1) The Minister may out of moneys appropriated by Parliament for the purpose—
- (a) of ensuring that proper effect is given to this Act, acquire land and interests in and rights to and over land adjoining or adjacent to any aerodrome in respect of which a licence under the regulations has been or is to be issued; and 30
- (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 35
underground or overhead, required in connection with such lights or other aids) which are considered necessary in connection with any aerodrome in respect of which a licence under the regulations has been or is to be issued.
- (2) In acquiring land in terms of subsection (1)(a) and (b) the Minister must consult with all interested parties prior to such acquisition. 40

PART 2

PERMISSION TO USE LAND HELD UNDER ANY RECONNAISSANCE PERMISSION, EXPLORATION, PROSPECTING OR MINING AUTHORISATION OR PERMISSION FOR AIRPORTS, CONSULTATION WITH INTERESTED PARTIES, TRESPASS, NUISANCE AND RESPONSIBILITY FOR DAMAGE 45

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

7. (1) Subject to the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), the National Environmental Management Act, 1998 (Act No. 107 of 1998), the National Water Act, 1998 (Act No. 36 of 1998), and the Constitution, the 50

Minister of Minerals and Energy may permit the use of land held under any reconnaissance permission, exploration, prospecting or mining authorisation or permission, for the establishment of airports or for landing places for aircrafts, provided such use is not, in the opinion of the Minister of Minerals and Energy, likely to interfere with the rights of landowners of such land, mining operations on such land or other purposes incidental thereto. 5

(2) Before granting any permission in terms of subsection (1) for the use of land held under any reconnaissance permission, exploration, prospecting or mining authorisation or permission for the establishment of airports or for landing places for aircraft, the Minister of Minerals and Energy must consult with the Minister and all interested parties. 10

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

8. (1) No action lies in respect of trespass or in respect of nuisance, by reason only of the flight of aircraft over any property at a height, which, having regard to wind, weather and all the circumstances of the case, is reasonable, or the ordinary incidents of such flight, so long as this Act, the Convention and the Transit Agreement are duly complied with. 15

(2) Where material damage or loss is caused by—
 (a) an aircraft in flight, taking off or landing; 20
 (b) any person in any such aircraft; or
 (c) any article falling from any such aircraft,
 to any person or property on land or water, damages may be recovered from the registered owner of the aircraft in respect of such damage or loss, without proof of negligence or intention or other cause of action as though such damage or loss had been caused by his or her wilful act, neglect or default. 25

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

(4) Where any damages recovered from or paid by the registered 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 registered owner or some person in his or her employment, the registered owner is entitled to recover from that person the amount of such damages. 30

(5) A registered owner or operator of an aircraft must have insurance as prescribed for any damage or loss that is caused by an aircraft to any person or property on land or water. 35

CHAPTER 4

PART 1

AIRCRAFT ACCIDENTS AND AIRCRAFT INCIDENTS, ESTABLISHMENT OF AVIATION SAFETY INVESTIGATION BOARD IN COMPLIANCE WITH CONVENTION, JURISDICTION OF AVIATION SAFETY INVESTIGATION BOARD AND OBJECTS OF AVIATION SAFETY INVESTIGATION BOARD 40

Application of Chapter to aircraft accidents and aircraft incidents

9. (1) This Chapter applies in respect of aircraft accidents and aircraft incidents in or over— 45

- (a) the Republic;
- (b) any place that is under the Republic's air traffic control; and
- (c) any other place, if—
 - (i) the Republic is requested to investigate the aircraft accident and aircraft incident by an appropriate authority in terms of the Convention; or 50
 - (ii) the aircraft accident and aircraft incident involves an aircraft in respect of which, or that is operated by a person to whom, a South African aviation authorisation, aviation certificate or any aviation approval document has been issued.

(2) The application of this Chapter in respect of aircraft accidents and aircraft incidents referred to in section 12(4) is subject to such restrictions in the interests of 55

national security as are provided in the Defence Act, 2002 (Act No. 42 of 2002), or as prescribed by the Minister.

(3) In this Chapter “Department” means any Department in the national sphere of Government, and “Minister” means any Minister in the national sphere of Government and appointed in terms of the Constitution. 5

Establishment of Aviation Safety Investigation Board

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

Objects of Aviation Safety Investigation Board

11. (1) The objects of the Aviation Safety Investigation Board are to advance aviation transportation safety by— 10

- (a) conducting independent investigations, including, when necessary, public inquiries into selected aircraft accidents and aircraft incidents in order to make findings as to their causes and contributing factors;
- (b) identifying safety deficiencies as evidenced by aircraft accidents and aircraft incidents; 15
- (c) making recommendations designed to eliminate or reduce any such safety deficiencies;
- (d) reporting publicly on its investigations and on the findings in relation thereto;
- (e) promoting compliance with the provisions and procedures of Annex 13 to the Convention; 20
- (f) investigating aircraft accidents and aircraft incidents in compliance with the provisions and procedures of Annex 13 to the Convention; and
- (g) discharging all other functions and obligations in compliance with the provisions and procedures of Annex 13 to the Convention. 25

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

(3) In making its findings as to the causes and contributing factors of an aircraft accident and an aircraft incident, it is not the function of the Aviation Safety Investigation Board to assign fault or determine civil or criminal liability, but the Board must not refrain from fully reporting on the causes and contributing factors merely because fault or liability might be inferred from the Aviation Safety Investigation Board’s findings. 30

(4) No finding of the Aviation Safety Investigation Board must be construed as assigning fault or determining civil or criminal liability. 35

(5) The findings of or the evidence before the Aviation Safety Investigation Board are not binding on the parties to any legal, disciplinary or any other proceedings and may not be used in any civil, criminal or disciplinary proceedings against persons giving such evidence. 40

Jurisdiction of Aviation Safety Investigation Board

12. (1) Notwithstanding any other legislation, the Aviation Safety Investigation Board may, if so requested by the Minister, investigate any aircraft accident and aircraft incident for the purpose of carrying out its objects.

(2) Notwithstanding any other legislation— 45

- (a) no department, other than the Department of Defence, may commence an investigation into an aircraft accident or aircraft incident for the purpose of making findings as to its causes and contributing factors, if—
 - (i) that aircraft accident or aircraft incident is being or has been investigated by the Aviation Safety Investigation Board under this Act; or 50
 - (ii) the Department has been informed that that aircraft accident or aircraft incident is proposed to be investigated by the Aviation Safety Investigation Board under this Act; and
- (b) where an investigation into an aircraft accident or aircraft incident is commenced by the Aviation Safety Investigation Board under this Act after an investigation into that aircraft accident or aircraft incident has been commenced by a department other than the Department of Defence, that 55

department must forthwith discontinue its investigation, to the extent that it is an investigation for the purpose of making findings as to the causes and contributing factors of the aircraft accident or aircraft incident.

(3) Subsection (2) does not prevent—

- (a) a department from commencing an investigation into or continuing to investigate an aircraft accident or aircraft incident for any purpose other than that of making findings as to its causes and contributing factors, or from investigating any matter that is related to the aircraft accident or aircraft incident and that is not being investigated by the Aviation Safety Investigation Board; or
- (b) the South African Police Service from investigating the aircraft accident or aircraft incident for any purpose for which it is empowered to conduct investigations.

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

- (a) a military conveyance and an aircraft, none of which is a military conveyance;
- (b) a military conveyance and a civil aviation facility; or
- (c) a military aviation facility and an aircraft, none of which is a military conveyance.

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

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

Coordination of investigations and remedial actions

13. (1) Where, at any time during an investigation into an aircraft accident or aircraft incident under this Act, a department other than the Department of Defence investigates that aircraft accident or aircraft incident, or undertakes remedial measures with respect to that aircraft accident or aircraft incident, the Aviation Safety Investigation Board and such department must take all reasonable measures to ensure that their activities with respect to that aircraft accident or aircraft incident are coordinated.

(2) Where conflicting interests arise between the Aviation Safety Investigation Board and a department in coordinating their activities pursuant to subsection (1), the requirements and interests of the Aviation Safety Investigation Board, subject to subsection (3) and any agreement entered into under section 26, take precedence and are paramount to the extent of the conflict.

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

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

Compatible procedures and practices

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

- (a) any international agreements or Conventions to which the Republic is a party; and
- (b) investigation procedures and practices followed by the judicial inquests in terms of the Inquests Act.

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

PART 2

**APPOINTMENT OF MEMBERS AND STAFF OF AVIATION SAFETY
INVESTIGATION BOARD, PROCEDURE AND REQUIREMENTS IN
APPOINTING MEMBERS, FILLING OF VACANCIES, REMUNERATION
AND DUTIES OF MEMBERS AND CONFLICT OF INTEREST OF MEMBERS** 5

Appointment of members, filling of vacancies and term of office

- 15.** (1) The Aviation Safety Investigation Board consists of not more than five members appointed by the Minister, one of whom must be a full-time member and Chairperson.
- (2) (a) The Chairperson is appointed by the Minister for a term of three years and may 10
on the expiration of such term be eligible for one further term only.
- (b) The Chairperson is the accounting authority of the Aviation Safety Investigation Board.
- (3) A member of the Aviation Safety Investigation Board must hold office for a term not exceeding three years and is on expiration of such member's term of office eligible 15
for reappointment.
- (4) The Minister may terminate the period of office of a member of the Aviation Safety Investigation Board—
- (a) if the performance of the member is unsatisfactory; or
- (b) if the member, either through illness or for any other reason, is unable to 20
perform the functions of office effectively.
- (5) In fixing a term of appointment or reappointment, the Minister must endeavour to ensure, to the extent that it is practical to do so, that, notwithstanding periodic changes in the membership of the Aviation Safety Investigation Board, it remains constituted of 25
persons who have experience as members of the Board.
- (6) Any vacancy on the Aviation Safety Investigation Board arising by virtue of the provisions of subsection (4) or caused by the death of a member, or for any other reason, must be filled by the appointment by the Minister in terms of section 16(1) of another person for the unexpired portion of the period for which the vacating member was 30
appointed.
- (7) The Minister may appoint any eligible person to act—
- (a) in any member's stead; or
- (b) in a temporary capacity in any vacancy in the Aviation Safety Investigation Board, for such period as the Minister may determine.
- (8) No person may be appointed as a member of the Aviation Safety Investigation Board unless he or she is a South African citizen permanently resident in the Republic. 35

Procedure and requirements in appointing members of Aviation Safety Investigation Board

- 16.** (1) The members contemplated in section 15 must be appointed only after—
- (a) the Minister has by notice in the *Gazette* and the media invited interested 40
parties to nominate persons suitable for appointment;
- (b) the Minister has submitted a list of at least 10 suitable candidates to Parliament, unless fewer than 10 nominations are received, in which case the Minister must submit all nominations received to Parliament; and
- (c) Parliament have submitted a shortlist of at least six candidates to the Minister 45
after considering persons so nominated, having due regard to the functions of the Aviation Safety Investigation Board.
- (2) In appointing the members of the Aviation Safety Investigation Board, who must collectively be knowledgeable of aviation transportation, the Minister must have regard 50
to 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, civil aviation safety or transportation regulations; and 55
- (d) any other factor or factors which the Minister considers, in his or her reasonable discretion, to be appropriate.

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

17. (1) The Chairperson and other appointed members of the Aviation Safety Investigation Board must be paid the remuneration and other allowances that are determined by the Minister as determined in consultation with the Minister of Finance. 5

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

Duties of Chairperson

18. The Chairperson of the Aviation Safety Investigation Board has exclusive responsibility for managing personnel matters, financial matters, property matters and for all other aspects of the internal management of the Aviation Safety Investigation Board, including— 10

- (a) directing the staff and apportioning the work of the Aviation Safety Investigation Board; 15
- (b) directing the members and apportioning their work, subject to section 24; and
- (c) convening meetings in accordance with section 20 and presiding at meetings in accordance with any rules made under section 30(4).

Chairperson may delegate powers and duties

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

- (a) delegate to any member any power or duty of the Chairperson relating to—
 - (i) convening or presiding at meetings; or
 - (ii) directing the members or apportioning their work; and
- (b) delegate to the staff of the Aviation Safety Investigation Board any power or duty of the Chairperson under this Act, except the matters described in paragraph (a). 25

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

Meetings and quorum of Aviation Safety Investigation Board 30

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

(2) The Chairperson convenes meetings of the Aviation Safety Investigation Board whenever the work of the Aviation Safety Investigation Board so requires or whenever the Chairperson is requested in writing to do so by two or more other members of the Aviation Safety Investigation Board. 35

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

(4) Three members of the Aviation Safety Investigation Board forms a quorum. 40

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

21. The expenditure in connection with the execution of the functions of the Aviation Safety Investigation Board must be paid out of money appropriated by Parliament for such purpose. 45

Public Finance Management Act binds Aviation Safety Investigation Board

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

Conflict of interest

- 23.** (1) A member of the Aviation Safety Investigation Board may not, directly or indirectly, as owner, shareholder, director, officer, partner or otherwise—
- (a) be engaged in an aviation undertaking or business; or
 - (b) have an interest in an aviation undertaking or business or an interest, financial or otherwise, in the manufacture or distribution of aviation plant or equipment, except where the distribution is merely incidental to the general merchandising of goods. 5
- (2) Any member of the Aviation Safety Investigation Board or any member of the staff or accredited representatives, experts and advisers of the Aviation Safety Investigation Board or his or her spouse, immediate family member, life partner or business associate, may not hold any direct or indirect financial interest in any civil aviation activity or the civil aviation industry without prior approval of the Minister, which approval is open to inspection by the public at the office of the Aviation Safety Investigation Board during business hours. 10 15
- (3) Where any interest referred to in subsection (1) vests in a member for the benefit of the member by way of gift, will, and succession or otherwise, the interest must, within three months after the vesting, be disposed of by that member.
- (4) During the term of office of a member, in addition to the prohibitions described in this section, the member of the Aviation Safety Investigation Board must not carry on 20 any activity inconsistent with the performance of the member's duties under this Act.

Duties of members of Aviation Safety Investigation Board

- 24.** (1) The members of the Aviation Safety Investigation Board, at meetings convened in accordance with section 20, must—
- (a) make rules regarding the conduct of business at meetings of the Aviation Safety Investigation Board; 25
 - (b) establish policies respecting the classes of aircraft accidents and aircraft incidents to be investigated;
 - (c) establish, either generally or in relation to specific classes of aircraft accidents and aircraft incidents, policies to be followed in the conduct of investigations; 30
 - (d) review reports submitted to them by the Director of Investigations mentioned in section 25(1) and, after such review, may require the Director of Investigations to conduct further investigation with respect to any aspect of an aircraft accident or aircraft incident;
 - (e) determine the Aviation Safety Investigation Board's findings as to the causes and contributing factors of aircraft accidents or aircraft incidents; 35
 - (f) identify any safety deficiencies as evidenced by aircraft accidents or aircraft incidents; and
 - (g) make such recommendations as they consider appropriate. 40
- (2) The Aviation Safety Investigation Board must make available to the public any policies established pursuant to subsection (1)(b) or (c). 40
- (3) The Aviation Safety Investigation Board must within the time required by the Public Finance Management Act submit to the Minister an annual report pertaining to the financial state of affairs of the Aviation Safety Investigation Board as at the end of the immediately preceding financial year, consisting of— 45
- (a) a balance sheet, an income statement and a cash-flow statement which is a true and correct reflection of the state of affairs of the Aviation Safety Investigation Board as at the end of that financial year;
 - (b) a report by the Aviation Safety Investigation Board in accordance with subsection (4); 50
 - (c) a report by the auditor of the Aviation Safety Investigation Board in accordance with subsection (5); and
 - (d) any other statement or report which the Minister or the Minister of Finance may require. 50
- (4) The report of the Aviation Safety Investigation Board referred to in subsection (3)(b) must deal with the state of affairs, the activities and operations and the financial position of the Aviation Safety Investigation Board, and must— 55
- (a) state the extent to which the Aviation Safety Investigation Board has achieved or advanced its objectives during the financial year concerned and specifically the detailed objectives of the business and financial plan; 60

- (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. 5
- (5) The auditor's report referred to in subsection (3)(c) must state separately in respect of each of the following matters whether in the auditor's opinion—
- (a) the balance sheet, income statement and cash-flow statement, as well as any other furnished information, fairly represent the financial position and results obtained by the Aviation Safety Investigation Board in accordance with generally accepted accounting practice, as applied on a basis consistent with that of the preceding year; 10
- (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; 15
- (c) the transactions of the Aviation Safety Investigation Board that had come to the auditor's notice in the course of his or her examination were made in accordance with this Act, the Public Finance Management Act and any applicable directives or regulations made thereunder; 20
- (d) the transactions that had come to his or her attention during auditing were in all material respects in accordance with the objects and functions of the Aviation Safety Investigation Board;
- (e) there are adequate measures and procedures for the proper application of sound economic, efficient and effective management; and 25
- (f) attention should be drawn to any other matter falling within the scope of the auditor's examination which, in his or her opinion, should in the public interest be brought to the notice of the Minister and Parliament.
- (6) The Minister must cause copies of the financial report submitted to him or her in terms of subsection (1) to be tabled for inspection in Parliament within 14 days of receipt of that report, or, if Parliament is not then in session, within 14 days after commencement of its next ensuing session. 30
- (7) 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 Aviation Safety Investigation Board during business hours. 35

Appointment of staff of Aviation Safety Investigation Board

- 25.** (1) The Aviation Safety Investigation Board must at its first meeting or as soon as practicable thereafter, after consultation with the Minister, appoint a Director of Investigations, other investigators and such staff as are necessary for the proper conduct of the work of the Aviation Safety Investigation Board. 40
- (2) The Chairperson of the Aviation Safety Investigation Board is responsible for the management of, and administrative control over, the staff appointed in terms of subsection (1) and is accountable to the Minister.
- (3) In the performance of its administrative and secretarial functions under this Act, the Aviation Safety Investigation Board is assisted by officers in the public service made available for such purpose by the Director-General. 45
- (4) (a) The Aviation Safety Investigation Board, 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. 50
- (b) The Aviation Safety Investigation Board with the concurrence of the Minister of Finance annually determine the remuneration, including reimbursement for travelling, subsistence and other expenses, of the persons referred to in paragraph (a).
- (5) Every person employed by the Aviation Safety Investigation Board must preserve secrecy with regard to any matter or information that may come to his or her knowledge in the performance of his or her duties, except where the publication of such matter or information is necessary for the purpose of the report of the Aviation Safety Investigation Board. 55
- (6) If there would be no conflict of interest created, the Chairperson may engage on a temporary basis the services of persons having technical or specialised knowledge to 60

assist the Aviation Safety Investigation Board in carrying out its duties under this Act, and may pay them such remuneration and expenses as the Aviation Safety Investigation Board, with the approval of the Minister, may determine.

Agreements between Aviation Safety Investigation Board and Director

26. (1) The Aviation Safety Investigation Board and the Director may enter into agreements with regard to— 5
- (a) the secondment of staff of the Director to the Aviation Safety Investigation Board for purposes of rendering any assistance during any investigation of any aircraft accidents or aircraft incidents; and
 - (b) any other matter relating or incidental to the investigation of aircraft accidents and aircraft incidents by the Aviation Safety Investigation Board. 10
- (2) When entering into such agreements the parties must avoid a conflict of interest.
- (3) The Aviation Safety Investigation Board must make all efforts to enter into agreements with Ministers responsible for departments—
- (a) providing for the coordination of activities between the Aviation Safety Investigation Board and departments with respect to aircraft accidents and aircrafts incidents, including investigation procedures and practices and requirements for reporting aircraft accidents and aircrafts incidents; and 15
 - (b) providing for procedures to be followed in the event that conflicting interests arise between the Aviation Safety Investigation Board and a department during their activities with regard to aircraft accidents and aircraft incidents. 20

Remuneration of staff of Aviation Safety Investigation Board

27. (1) An appointed member of staff of the Aviation Safety Investigation Board receives such remuneration and allowances as may be determined by the Minister in consultation with the Minister of Finance. 25
- (2) Different scales of remuneration, allowances, benefits or privileges may be determined under subsection (1) in respect of the different members of staff of the Aviation Safety Investigation Board.

Independence and impartiality of Aviation Safety Investigation Board

28. (1) The members, staff and accredited representatives, experts and advisers of the Aviation Safety Investigation Board must serve impartially and independently and exercise, carry out and perform their powers, duties and functions in good faith and without fear, favour, bias or prejudice, subject only to this Act and the Convention. 30
- (2) A member of the Aviation Safety Investigation Board, member of staff, accredited representatives, experts and advisers of the Aviation Safety Investigation Board may not conduct an investigation in terms of this Act or render assistance with regard to a matter in which he or she has any pecuniary or other interest which might preclude him or her from exercising his or her powers or from carrying out or performing duties and functions in a fair, unbiased and proper manner. 35
- (3) If any member of the Aviation Safety Investigation Board, any member of staff, accredited representatives, experts and advisers of the Aviation Safety Investigation Board fail to disclose an interest contemplated in subsection (2), the Aviation Safety Investigation Board may take such steps as it considers necessary to ensure a fair, unbiased and proper investigation. 40

PART 3 45

FUNCTIONS AND POWERS OF AVIATION SAFETY INVESTIGATION BOARD, POWERS OF DIRECTOR OF INVESTIGATIONS AND INVESTIGATORS, NOTIFICATION OF AIRCRAFT ACCIDENTS AND AIRCRAFT INCIDENTS BY DEPARTMENTS AND ATTENDANCE AND OBSERVERS AT INVESTIGATIONS 50

Functions of Aviation Safety Investigation Board

29. (1) The functions of the Aviation Safety Investigation Board are to—
- (a) take steps to achieve the objects as contemplated in section 11 of this Act;

- (b) investigate aircraft accidents and aircraft incidents in compliance with Annex 13 to the Convention;
- (c) advise any authority or Contracting State, State of Registry, State of the Operator, State of Design and State of Manufacture with regard to any safety recommendation or safety matter prior to the completion of any investigation; 5
- (d) oversee and exercise general control over the performance of the functions and of the activities of the persons appointed or designated by it to perform the work of the Aviation Safety Investigation Board;
- (e) submit to the Minister within three months after completion of an investigation a final report on its findings; 10
- (f) submit a final report to all recipient States in compliance with Chapter 6 of Annex 13 to the Convention concerning any aircraft accident or aircraft incident investigated by the Aviation Safety Investigation Board; and
- (g) monitor the implementation of safety recommendations as issued by Contracting States. 15

Powers of Aviation Safety Investigation Board

- 30.** (1) The Aviation Safety Investigation Board 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 25, having due regard to available funds; 20
 - (b) obtain, by agreement, the services of any person, including any organ of state, for the performance of any specific act or function;
 - (c) acquire or dispose of any right in or to property, but ownership in immovable property may be acquired or disposed of only with the consent of the Minister;
 - (d) investigate aircraft accidents and aircraft incidents; 25
 - (e) determine categories of aircraft accidents and aircraft incidents that should be investigated by the Aviation Safety Investigation Board;
 - (f) make rules for the internal procedure for the investigation of aircraft accidents and aircraft incidents by the Aviation Safety Investigation Board;
 - (g) delegate, with the approval of the Minister, the investigation of any aircraft accident or aircraft incident to any other Contracting State, in accordance with Annex 13 to the Convention; 30
 - (h) collect and disseminate relevant information;
 - (i) reopen any investigation;
 - (j) establish an aircraft accident and aircraft incident reporting system to facilitate the collection of information on actual or potential safety deficiencies; 35
 - (k) upon request conduct investigations on behalf of other contracting States;
 - (l) open and operate its own bank accounts;
 - (m) insure itself against any loss, damage or risk; 40
 - (n) perform legal acts, including acts in association with or on behalf of any other person or organ of state;
 - (o) institute or defend any legal action; and
 - (p) do anything that is incidental to the exercise of any of its powers.
- (2) If the accident occurred within the Republic, the Aviation Safety Investigation Board has the power to— 45
- (a) summon and examine witnesses under oath and to call for the production of books, logs, certificates, licences, medical records and other documents, and may grant inspection thereof; and
 - (b) summon any person to give evidence before it, or to produce any official document or such other information or object as may be necessary for the performance of the Aviation Safety Investigation Board's functions. 50
- (3) The Aviation Safety Investigation Board may make rules in relation to the conduct and procedure of its meetings.
- (4) The Aviation Safety Investigation Board may make rules in relation to the notification, reporting, investigation of aircraft accidents and incidents and the conduct and procedures of its investigations, including the participation of accredited representatives, advisers, experts and observers. 55
- (5) Aviation Safety Investigation Board may authorise any of its members to act as the Board's accredited representative where the Republic is not the State of Occurrence, and 60

such accredited representative may be accompanied by advisers and experts as the Aviation Safety Investigation Board may consider necessary.

(6) The Aviation Safety Investigation Board may authorise any of its members to act on its behalf in any matter.

(7) The Aviation Safety Investigation Board may, with the approval of the Minister and in consultation with the Minister of Finance, raise money by way of loans. 5

Powers of Director of Investigations

31. (1) The Director of Investigations has exclusive authority to direct the conduct of investigations on behalf of the Aviation Safety Investigation Board under this Act in relation to aircraft accidents and aircraft incidents, but— 10

- (a) the Director of Investigation's authority under this subsection must be exercised in accordance with any policies established under section 24(1)(b) and (c); and
- (b) the Director of Investigations shall report to the Aviation Safety Investigation Board with regard to investigations and shall conduct such further investigation as the Aviation Safety Investigation Board requires under section 24(1)(d). 15

Designation and powers of investigators

32. (1) The Director of Investigations may designate an investigator in charge and any number of investigators to investigate any aircraft accident or aircraft incident in the Republic. 20

- (2) An investigator designated in terms of subsection (1) has authority to—
 - (a) have unrestricted access to and control over an aircraft which has been involved in an aircraft accident or aircraft incident, the wreck or wreckage, the place where the aircraft, the wreck or wreckage is located and the places where marks resulting from the aircraft accident or aircraft incident which may be of assistance in an investigation, are located; 25
 - (b) preserve an aircraft which has been involved in an aircraft accident or aircraft incident or the wreck or wreckage, any remains and any marks resulting from the aircraft accident or aircraft incident which may be of assistance in the investigation, by any means available, including photographic means; 30
 - (c) examine an aircraft involved in an aircraft accident or aircraft incident, the wreck or wreckage, any part or component thereof or any item transported therein or any marks resulting from the aircraft accident or aircraft incident which may be of assistance in the investigation, and to remove any such aircraft, wreck or wreckage, or any part or component thereof or any item transported therein for the purpose of the investigation or for an inquiry by an Accident Inquiry Board appointed in terms of section 68 or 69; 35
 - (d) compile reports in connection with the investigation;
 - (e) have unrestricted access to all documents, including relevant medical records, books, notes, photographs, recordings and transcripts which the investigator-in-charge may consider necessary for the investigation and which must be produced without delay by the possessor thereof when so requested; 40
 - (f) obtain information and take statements, from any person, which may be necessary for the investigation; 45
 - (g) have unrestricted access to and control over all relevant evidence, including flight recorders and air traffic service recordings;
 - (h) summon and examine witnesses under oath and call for the production, and grant inspection, of books, logs, certificates, licences and other documents, including medical information and records, and summon any person to give evidence before it or to produce any official document or such other information or object as may be necessary for the performance of the Aviation Safety Investigation Boards functions; and 50
 - (i) regulate, prohibit and control any access to the accident scene or the accident scene of any aircraft accident or aircraft incident. 55
- (3) An investigator who is investigating an aircraft accident or aircraft incident may—
 - (a) where the investigator believes on reasonable grounds that a person is in possession of information relevant to that investigation—

- (i) by notice in writing signed by the investigator, require the person to produce the information to the investigator or to attend before the investigator and give a statement referred to in subsection (2)(f) under oath or solemn affirmation if required by the investigator; and
 - (ii) make such copies of or take such extracts from the information as the investigator considers necessary for the purposes of the investigation;
- (b) where the investigator believes on reasonable grounds that the medical examination of a person who is directly or indirectly involved in the operation of an aircraft, or may be relevant to the investigation, by notice in writing signed by the investigator require the person to submit to a medical examination;
- (c) where the investigator believes on reasonable grounds that a physician or other health practitioner has information concerning a patient that is relevant to that investigation, by notice in writing signed by the investigator require the physician or practitioner, if so authorised by the patient or such physician or practitioner, to provide that information to the investigator; or
- (d) where the investigator believes on reasonable grounds that the performance of an autopsy on the body of a deceased person, or the carrying out of other medical examinations of human remains, is or may be relevant to the conduct of the investigation, cause such an autopsy or medical examination to be performed and, for that purpose, by notice in writing signed by the investigator, require the person having custody of the body of the deceased person or other human remains to permit the performance of that autopsy or that medical examination.
- (4) The requirement under subsection (3) that a person submit to a medical examination shall not be construed as a requirement that the person submit to any procedure involving surgery, perforation of the skin or any external tissue or the entry into the body of any drug or foreign substance.
- (5) Where an investigator has required a person to do something under subsection (3)(a), (b), (c) or (d) and the person has refused to do as required, the investigator may make an application to a court of competent jurisdiction, setting out the facts, and the court may inquire into the matter and, after giving the person an opportunity to comply with the requirement, take steps for the punishment of the person as if the person had been guilty of contempt of the court, or may make such other order as it finds appropriate.
- (6) An investigator may, for the purpose of preserving and protecting any item involved or likely to have been involved in an aircraft accident or aircraft incident, whether or not the item has been seized under this section, prohibit or limit access to the area immediately surrounding the place at which the item is located for such period as is necessary for the purposes of the investigation of the aircraft accident or aircraft incident, as the case may be.

Search and seizure by appointed investigators

- 33.** (1) In the execution of the authority contemplated in section 32 an investigator may search and seize any property or item, including medical records, recorders and air traffic service recordings of an aircraft accident or aircraft incident without a warrant.
- (2) An investigator in respect of this Act is considered to have been appointed as a peace officer by the Minister for Justice and Constitutional Development in terms of section 334 of the Criminal Procedure Act for the Republic, and for the purpose of exercising the powers contemplated in sections 40, 41, 44, 45, 46, 47, 48, 49 and 56 of the Criminal Procedure Act.
- (3) Where an investigator believes on reasonable grounds that there is, or may be, at or in any place, any item relevant to the conduct of an investigation of a transportation occurrence, the investigator may, subject to subsection (4), enter and search that place for any such item, and seize any such item that is found in the course of that search.
- (4) An investigator may use the powers in terms of this section only to serve the purposes of this Act and matters incidental thereto, and must take the necessary steps to secure the safekeeping of the property or items seized.

Power to test items seized

- 34.** (1) Where any item is seized by an investigator under section 33, the investigator—
- (a) may, subject to paragraph (b), cause such tests, including tests to destroy, to be conducted on the item as are necessary for the purposes of the investigation in respect of which the item was seized; 5
 - (b) must, to the extent that it is practical and safe to do so and does not unreasonably impede the progress of the investigation, take all reasonable measures to invite the owner of the item, and any person who appears on reasonable grounds to be entitled to it, to be present at any tests referred to in paragraph (a); and 10
 - (c) subject to the need to conduct such tests, shall cause the item to be preserved pending its return in accordance with section 36 of this Act.
- (2) Nothing in this section must be taken—
- (a) to imply that an item seized pursuant to subsection (1) may not be an aircraft or any part thereof; or 15
 - (b) to authorise the exercise of a power by an investigator in circumstances where the exercise of that power would be inconsistent with the objective of the investigation.

Certificate to be produced

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

Return of seized property

- 36.** (1) Any item seized pursuant to section 33, except on-board recordings as defined in section 46, must, unless— 25
- (a) the owner thereof or a person who appears on reasonable grounds to be entitled to it consents in writing; or
 - (b) a court of competent jurisdiction orders otherwise,
- be returned to that owner, person, or the person from whom it was seized, as soon as possible after it has served the purpose for which it was seized. 30
- (2) A person from whom any item was seized pursuant to section 33, except on-board recordings as defined in section 46, or the owner or any other person who appears on reasonable grounds to be entitled thereto, may apply to a court of competent jurisdiction for an order that the seized item be returned to the person making the application. 35
- (3) Where, on an application under subsection (2) of this section, the court is satisfied that the seized item has served the purpose for which it was seized or should, in the interests of justice, be returned to the applicant, the court may grant the application and order the seized item to be returned to the applicant, subject to any terms or conditions that appear necessary or desirable to ensure that the item is safeguarded and preserved for any purpose for which it may subsequently be required by the Aviation Safety Investigation Board under this Act. 40
- (4) This section does not apply in respect of any item seized and tested to destruction in accordance with section 34.

Public inquiry

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- 37.** (1) Where, in the course of an investigation of an aircraft accident or aircraft incident, the Aviation Safety Investigation Board considers it necessary that a public inquiry be made into the aircraft accident or aircraft incident, the Chairperson may designate a person or persons, who may be, or may include, the Chairperson, to conduct a public inquiry into that aircraft accident or aircraft incident in accordance with any rules made under section 30 and to report to the Aviation Safety Investigation Board thereon. 50
- (2) Any person designated to conduct a public inquiry under this section has and may exercise the powers of a person appointed as an investigator, subject to any restrictions specified in the designation. 55

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

- 38.** (1) Where a department is notified of an aircraft accident or aircraft incident in which such department has a direct interest and which the Aviation Safety Investigation Board has the power to investigate under this Act, that department must— 5
- (a) forthwith provide the Aviation Safety Investigation Board with particulars of the aircraft accident or aircraft incident; and
 - (b) forthwith, after complying with paragraph (a), advise the Aviation Safety Investigation Board of any investigation that a department plans to conduct and of any remedial measures that a department plans to take. 10
- (2) An investigator authorised by the Chairperson of the Aviation Safety Investigation Board may attend as an observer at an investigation conducted by a department referred to in subsection (1) or during the taking of remedial measures by that department following an aircraft accident or aircraft incident.
- (3) Subject to any other Act the Aviation Safety Investigation Board must, on request, be provided with and may review and comment on any interim or final report prepared in respect of an investigation conducted by a department referred to in subsection (1)(b). 15

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

- 39.** Where the Aviation Safety Investigation Board is notified of an aircraft accident or aircraft incident, it must— 20
- (a) forthwith provide particulars of the aircraft accident or aircraft incident to any Minister responsible for a department having a direct interest in the aircraft accident or aircraft incident; and
 - (b) forthwith after complying with paragraph (a), advise the Minister referred to in paragraph (a) of any investigation that it plans to conduct and the scope of the investigation. 25

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

- 40.** (1) Subject to any conditions that the Aviation Safety Investigation Board may impose, a person may attend as an observer at an investigation of an aircraft accident or aircraft incident conducted by the Aviation Safety Investigation Board if the person— 30
- (a) is designated as an observer by the Minister responsible for a department having a direct interest in the subject matter of the investigation;
 - (b) has observer status or is an accredited representative or an adviser to an accredited representative, pursuant to an international agreement or convention relating to transportation to which the Republic is a party; or 35
 - (c) is invited by the Aviation Safety Investigation Board to attend as an observer because, in the opinion of the Aviation Safety Investigation Board, the person has a direct interest in the subject matter of the investigation and will contribute to achieving the Aviation Safety Investigation Board's objects. 40
- (2) The Aviation Safety Investigation Board may remove an observer from an investigation if the observer contravenes any condition imposed by the Aviation Safety Investigation Board on the observer's presence or if, in the Aviation Safety Investigation Board's opinion, the observer has a conflict of interest that impedes the conduct of the investigation. 45

PART 5

REPORTING ON COMPLETION OF ANY AIRCRAFT ACCIDENT OR AIRCRAFT INCIDENT INVESTIGATION

Rights of affected parties, making representations and publication of report 50

- 41.** (1) On completion of any investigation, the Aviation Safety Investigation Board must prepare and make available to the public a report on its findings, including any safety deficiencies that it has identified and any recommendations that it considers appropriate in the interests of aviation safety.

- (2) Before making public a report under subsection (1) the Aviation Safety Investigation Board—
- (a) must send a copy of the draft report on its findings and any safety deficiencies that it has identified to each Minister and any other person who, in the opinion of the Aviation Safety Investigation Board, has a direct interest in the findings of the Aviation Safety Investigation Board; and
 - (b) must give that Minister or other person a reasonable opportunity to make representations to the Aviation Safety Investigation Board with regard to the draft report before the final report is prepared.
- (3) The period for submission of any representations must be not less than 60 days.
- (4) No person may communicate or use the draft report or permit its communication or use for any purpose, other than the taking of remedial measures, not strictly necessary to the study of, and preparation of representations concerning, the draft report.
- (5) The Aviation Safety Investigation Board must provide an interim report on the progress and findings of an investigation—
- (a) on written request made in respect of that investigation, to any Minister responsible for a department having a direct interest in the subject matter of the investigation; and
 - (b) to any coroner investigating the aircraft accident or aircraft incident, where the aircraft accident or aircraft incident involved a fatality and significant progress has been made in the Aviation Safety Investigation Board's investigation.
- (6) A person, other than a Minister of a department, who is provided with an interim report under subsection (5) must not use the report or permit its use for any purpose not strictly necessary to the examination of the report.
- (7) The Aviation Safety Investigation Board may at any time reconsider any of its findings and recommendations pursuant to an investigation that it has conducted under this Act, whether or not it has made public a report of those findings and recommendations.
- (8) The Aviation Safety Investigation Board must reconsider its findings and recommendations pursuant to an investigation that it has conducted under this Act where, in its opinion, new material facts appear.

Manner of dealing with representations

- 42.** (1) The Aviation Safety Investigation Board must—
- (a) receive representations made to it pursuant to section 41 in any manner the Aviation Safety Investigation Board considers appropriate;
 - (b) keep a record of those representations;
 - (c) consider those representations before preparing its final report; and
 - (d) notify in writing each of the persons who made those representations, indicating how the Aviation Safety Investigation Board has disposed of that person's representations.
- (2) A representation is privileged, except if it is a representation made by a Minister responsible for a department having a direct interest in the findings of the Aviation Safety Investigation Board subject to this Act or to a written authorisation from the author of a representation, and no person may knowingly communicate any representation or permit it to be communicated to any other person.
- (3) The Aviation Safety Investigation Board may use representations it considers necessary in the interests of aviation safety.
- (4) If requested to do so by a judicial inquest instituted in terms of the Inquests Act, conducting an inquest into any circumstances in respect of which representations were made to the Aviation Safety Investigation Board, it must make such representations available to such inquest.
- (5) Except for use for the purpose of an investigation by a judicial inquest in terms of the Inquest Act no person may use any representations made to the Aviation Safety Investigation Board under this section in any criminal, civil, disciplinary or other proceedings.

Notification of findings and recommendations

- 43.** The Aviation Safety Investigation Board must—
- (a) during its investigation of an aircraft accident or aircraft incident, notify forthwith in writing the Minister or any person who in its opinion has a direct interest in its findings and recommendations, whether interim or final, that in its opinion the matter requires urgent action; and 5
 - (b) on completion of its investigation of an aircraft accident or aircraft incident, notify forthwith in writing any Minister or person who, in its opinion, has a direct interest in its findings as to the causes and contributing factors of the aircraft accident or aircraft incident, any safety deficiencies it has identified and any recommendations resulting from its findings. 10

Minister to respond to Aviation Safety Investigation Board

- 44.** (1) A Minister who is notified of the findings and recommendations of the Aviation Safety Investigation Board under section 43(a) or (b) must, within 90 days after being so notified— 15
- (a) advise the Aviation Safety Investigation Board in writing of any action taken or proposed to be taken in response to those findings and recommendations; or
 - (b) provide written reasons to the Aviation Safety Investigation Board if no action will be taken or if the action to be taken differs from the action that was recommended. 20
- (2) Where the Aviation Safety Investigation Board is satisfied that a Minister is unable to respond to the Aviation Safety Investigation Board within the period referred to in subsection (1) the period may be extended as the Aviation Safety Investigation Board considers necessary.

Aviation Safety Investigation Board may delegate powers 25

- 45.** (1) The Aviation Safety Investigation Board may delegate to any person, subject to any limitations specified in the instrument of delegation, any of the powers conferred or duties imposed on the Aviation Safety Investigation Board under this Act, other than the power—
- (a) of delegation under this subsection; 30
 - (b) to make rules; and
 - (c) to make recommendations.
- (2) A delegation under this section may be revoked in writing at any time by the Aviation Safety Investigation Board.

PART 6 35

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

40

Definition of “on-board recording”

- 46.** (1) In this Part, “on-board recording” means the whole or any part of—
- (a) a recording of voice communications originating from, or received on or in, the flight deck of an aircraft; or
 - (b) a video recording of the activities of the personnel of an aircraft, that is made, using recording equipment that is intended not to be controlled by the personnel, on the flight deck of the aircraft, 45
- and includes a transcript or substantial summary of such a recording.

Privilege for on-board recordings

- 47.** (1) Every on-board recording is privileged and, except as provided by this section, no person, including any person to whom access is provided under this section, must— 50

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

Access by Aviation Safety Investigation Board 5

48. Notwithstanding section 47 any on-board recording that relates to an aircraft accident or aircraft incident being investigated under this Act must be released to an investigator who requests it for the purposes of the investigation.

Use of on-board recording by Aviation Safety Investigation Board

49. The Aviation Safety Investigation Board may make such use of any on-board recording obtained under this Act as it considers necessary in the interests of aviation safety but, subject to section 51, must not knowingly communicate or permit to be communicated to anyone any portion thereof that is unrelated to the causes or contributing factors of the aircraft accident or aircraft incident under investigation or to the identification of safety deficiencies. 10
15

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

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

- (a) a coroner who requests access thereto for the purpose of an investigation that the coroner is conducting; or 20
- (b) any person carrying out a coordinated investigation under section 13.

Power of court or inquest

51. Notwithstanding any item in this section, where, in any proceedings before a court or a judicial inquest in terms of the Inquests Act or a person or persons appointed or designated to conduct a public inquiry into an aircraft accident or aircraft incident pursuant to this Act, a request for the production and discovery of an on-board recording is made, the court or a judicial inquest in terms of the Inquests Act, or a person or persons appointed or designated to conduct a public inquiry into an aircraft accident or aircraft incident pursuant to this Act, must— 25

- (a) cause notice of the request to be given to the Aviation Safety Investigation Board, if the Aviation Safety Investigation Board is not a party to the proceedings; 30
- (b) in camera, examine the on-board recording and give the Aviation Safety Investigation Board a reasonable opportunity to make representations with regard thereto; and 35
- (c) if the court or a judicial inquest in terms of the Inquests Act concludes in the circumstances of the case that the public interest in the proper administration of justice outweighs the privilege attached to the on-board recording by virtue of this section, order the production and discovery of the on-board recording, subject to such restrictions or conditions as the court or a judicial inquest in terms of the Inquests Act considers appropriate, and may require any person to give evidence that relates to the on-board recording. 40

Use of on-board recording prohibited

52. An on-board recording may not be used against any of the following persons in disciplinary proceedings, proceedings relating to the capacity or competence of an officer or employee to perform the officer's or employee's functions, or in legal or other proceedings: 45

- (a) Air crew members;
- (b) airport vehicle operators;
- (c) flight service station specialists; 50
- (d) persons who relay messages respecting air traffic control, or related matters.

Definition of “communication record”

53. (1) In this Part, “communication record” means the whole or any part of any record, recording, copy, transcript or substantial summary of any type of communications in respect of air traffic control or related matters that take place between any of the following persons, namely air traffic controllers, aircraft crew members, airport vehicle operators, flight service station specialists and persons who relay messages in respect of air traffic control or related matters. 5

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

Statement privileged

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54. (1) For the purposes of this Part and section 32(2)(f)—

(a) “statement” means—

(i) the whole or any part of an oral, written or recorded statement relating to an aircraft accident or aircraft incident and given, by the author of the statement, to the Aviation Safety Investigation Board, an investigator or any person acting for the Aviation Safety Investigation Board or for an investigator; 15

(ii) a transcription or substantial summary of a statement referred to in subparagraph (i); or

(iii) conduct that could reasonably be taken to be intended as such a statement; and 20

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

(2) A statement is privileged, and no person, including any person to whom access is provided under this section, must knowingly communicate it or permit it to be communicated to any person except as provided by this Act or as authorised in writing by the person who made the statement. 25

Access by judicial inquest and other investigators

55. The Aviation Safety Investigation Board must make statements available to—

(a) a judicial inquest in terms of the Inquests Act, 1959, who requests access thereto for the purpose of an investigation that the coroner is conducting; or 30

(b) any person carrying out a coordinated investigation under section 13.

Power of court or inquest with regard to statements

56. Notwithstanding any item in this section, where, in any proceedings before a court or an inquest or a person or persons appointed or designated to conduct a public inquiry into an aircraft accident or aircraft incident pursuant to this Act, a request for the production and discovery of a statement is contested on the ground that it is privileged, the court or coroner must— 35

(a) in camera, examine the statement; and

(b) if the court or a judicial inquest concludes in the circumstances of the case that the public interest in the proper administration of justice outweighs the privilege attached to the statement by virtue of this section, order the production and discovery of the statement, subject to such restrictions or conditions as the court or coroner considers appropriate, 40

and may require any person to give evidence that relates to the statement. 45

Use of statement prohibited

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

Reporting of aircraft accidents and aircraft incidents

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58. (1) The Aviation Safety Investigation Board may, subject to the approval of the Minister, make rules for the establishment and administration of systems for the

mandatory or voluntary reporting to the Aviation Safety Investigation Board of aircraft accidents or aircraft incidents or such classes thereof as are specified in the rules.

(2) The Aviation Safety Investigation Board may, subject to this section, make such use of any report made to it pursuant to rules made under subsection (1) as it considers necessary in the interests of aviation safety. 5

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

Certain information privileged

59. Where the identity of a person who has made a report to the Aviation Safety Investigation Board pursuant to rules made under section 63 is protected by rules referred to in section 68, information that could reasonably be expected to reveal that identity is privileged, and no person must— 10

- (a) knowingly communicate it or permit it to be communicated to any person; or
- (b) be required to produce it or give evidence relating to it in any legal, disciplinary or other proceedings. 15

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

60. A report made to the Aviation Safety Investigation Board under a voluntary reporting system established by rules made under section 58 must not be used against the person who made the report in any legal, disciplinary or other proceedings if the person's identity is protected by rules referred to in section 63. 20

Appearance of investigator

61. Except for proceedings before and investigations by a judicial inquest, an investigator is not competent or compellable to appear as a witness in any proceedings, unless the court or other person or body before whom the proceedings are conducted so orders for special cause. 25

Opinions inadmissible

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

PART 7 30

RULES

Rules

63. (1) The Aviation Safety Investigation Board may, subject to the approval of the Minister, make rules—

- (a) prescribing the manner in which to exercise or carry out any of its powers, duties and functions under this Act and, generally, for its efficient operation; 35
- (b) regulating the keeping and preservation of records, documents and other evidence relating to aircraft accidents and aircraft incidents;
- (c) regulating the attendance of interested persons at tests to destruction conducted under section 34; 40
- (d) defining, for the purposes of an investigation, the site or sites of an aircraft accident or aircraft incident and for the protection of those sites;
- (e) for defining the rights or privileges of persons attending investigations as accredited representatives, advisers, experts, and observers or with observer status; 45
- (f) regarding the tariff of fees and expenses to be paid to any witness attending at an investigation or at a public inquiry conducted under section 37 and the conditions under which a fee or expenses may be paid to any such witness;
- (g) regarding the procedures and rules to be followed in conducting public inquiries under section 37; 50

- (h) regarding the tariff of travel and living expenses to be paid to any member or member of staff of the Aviation Safety Investigation Board; and
 - (i) generally for carrying out the purposes and provisions of this Act.
- (2) A copy of each rule that the Aviation Safety Investigation Board proposes to make under subsection (1) must be published in the *Gazette* at least 90 days before the proposed effective date, and within that 90 days interested persons are given an opportunity to make representations to the Aviation Safety Investigation Board. 5
- (3) Subsection (2) does not apply in respect of a proposed rule that—
- (a) has previously been published pursuant to that subsection, whether or not it has been changed as a result of representations made pursuant to that subsection; or 10
 - (b) makes no substantive change to an existing rule.

PART 8

OFFENCES

Offences 15

- 64.** (1) Any person who—
- (a) without lawful excuse, wilfully resists or otherwise obstructs a member or an investigator in the execution of powers or duties under this Act;
 - (b) knowingly gives false or misleading information at any investigation or public inquiry under this Chapter; or 20
 - (c) makes a report pursuant to section 54 that the person knows to be false or misleading,

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

(2) A person may not refuse or fail to produce information to an investigator, or to attend before an investigator and give a statement, in accordance with section 32(3)(a), or to provide information in accordance with section 32(3)(c) or to make the body of a deceased person or other human remains available for the performance of an autopsy or medical examination in accordance with a requirement imposed under section 32(3)(d) of this Act. 30

(3) (a) No person may refuse or fail to submit to a medical examination in accordance with section 32(3)(b), but information obtained pursuant to such an examination is privileged and subject to the power of the Aviation Safety Investigation Board to make use of it as it considers necessary in the interests of aviation safety.

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

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

Evidence

- 65.** (1) Subject to section 64(1)—
- (a) a report purporting to have been signed by an investigator stating that the investigator has exercised any power pursuant to section 32 and stating the results of the exercise of the power; or 45
 - (b) a document purporting to have been certified by an investigator as a true copy of or extract from a document produced to the investigator pursuant to section 32,

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

(2) No report or document must be received in evidence under this section unless the party intending to produce it has, at least seven days before producing it, served a notice 55

of that intention on the party against whom it is intended to be produced, together with a copy of the report or document.

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

PART 9

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

Investigations 10

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

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

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

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

CHAPTER 4

MINISTERIAL BOARDS OF INQUIRY

Accident inquiry board 25

68. (1) In the event of any aircraft accident or aircraft incident 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 a South African aircraft, wheresoever it may be, the Minister may, after the completion of any investigation by the Aviation Safety Investigation Board, 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 or her thereon. 30

(2) If the accident occurred within the Republic the accident inquiry board has 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. 35

(3) The laws and rules governing the magistrates' courts of the Republic, apply to procuring the attendance of witnesses, their examination and the production of books and documents.

(4) The chairman of the accident inquiry board or, where the board consists of one person only, such person signs documents for the inquiry. 40

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

(6) Nothing contained in this section must be construed as affecting the powers or duties conferred or imposed upon judicial officers by the Inquests Act.

(7) 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. 45

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

69. (1) When an offence has been committed of this Act with reference to any provision of section 120, 125, 126 and 127 or if any orders have been issued under section 129 to counter any action contemplated in that section, the Minister may appoint a board of inquiry, which consists of so many persons as the Minister may determine, to inquire into such offence or such action and to report to him or her thereon and make such recommendations as the board may think fit. 5

(2) The board shall determine its own procedure and, where it consists of more than one member, must have a chairperson designated by the Minister. 10

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

(4) The laws and rules governing procuring the attendance of witnesses, their examination, the production of books and documents, and for that purpose the chairperson of the board or, where the board consists of one person only, such person signs such documents as may be necessary for the purpose of the inquiry. 15

(5) Any process to be served for the purposes of the board must be served by the messenger of the court for the district in which the person upon whom service is to be made resides, or by a member of the South African Police Service. 20

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

(7) If the chairperson of the board or, where the board consists of one person only, such person considers it in the public interest, he or she may direct that any finding or recommendation of the board, or any evidence as presented to the board, must not be made available to any court of law. 25

CHAPTER 5

PART 1 CIVIL AVIATION AUTHORITY 30

Establishment of Civil Aviation Authority

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

Objects of Civil Aviation Authority

71. The objects of the Civil Aviation Authority are to— 35

- (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.

Functions of Civil Aviation Authority

72. (1) The Civil Aviation Authority has the function of conducting the safety and security oversight of civil aviation in the Republic by— 40

- (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; 45
- (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; 50
- (f) conducting regular reviews of the system of civil aviation safety and security in order to—
 - (i) monitor the safety performance of the aviation industry;

- (ii) identify safety- and security-related trends and risk factors; and
 - (iii) promote the development and improvement of the system;
 - (g) conducting regular and timely assessment of international safety and security developments;
 - (h) formulating and approving supporting regulations and technical standards through a consultative process with the aviation industry; and
 - (i) the formulating of a national aviation disaster plan.
- (2) The Civil Aviation Authority 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 programmes;
 - (ii) accurate and timely aviation safety and security advice; and
 - (iii) fostering an awareness in industry management, and within the community generally, of the importance of aviation safety and security and compliance with relevant legislation; and
 - (b) promoting communication with all interested parties on aviation safety and security issues.
- (3) In addition to the functions referred to in subsections (1) and (2) the Civil Aviation Authority has the following functions:
- (a) To administer this Act and the Acts mentioned in Schedule 5;
 - (b) to recommend to the Minister the introduction or amendment of civil aviation safety and security legislation;
 - (c) to make recommendations to the Minister in respect of the conclusion of any international agreement with other States, government or international organisation;
 - (d) to perform any other functions conferred on it by or under any other law;
 - (e) to execute an order issued in terms of section 78;
 - (f) to implement any mutual agreements and conventions;
 - (g) to perform any other functions as prescribed;
 - (h) to promote the development of South Africa's civil aviation safety and security capabilities, skills and services, for the benefit of the South African community;
 - (i) to provide consultancy and management services relating to this Act, both within and outside the Republic;
 - (j) to perform any functions incidental to any of the functions specified in this section;
 - (k) to investigate aircraft accidents and aircraft incidents that the Aviation Safety Investigation Board has determined not to investigate in terms of Chapter 4, to the extent that the Director considers necessary; and
 - (l) to perform its functions in the most cost-efficient and cost-effective manner and in accordance with section 195 of the Constitution in order to achieve the objects as referred to in section 71.
- (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 the obligations of the Republic under—
- (a) any international agreement which is binding on the Republic; and
 - (b) customary international law binding on the Republic by virtue of section 232 of the Constitution.

Staff of Civil Aviation Authority

- 73.** (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, or make available the services of that officer to, the Civil Aviation Authority.

Funding of Civil Aviation Authority

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

Restriction on use of name 25

- 75.** (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 30
 - (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.

Conflict of interest

- 76.** (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 this Act. 35
- (2) Should any interest referred to in subsection (1) vest in a person referred to in that subsection, by way of a gift, a will, succession or otherwise, such interest must be absolutely disposed of within three months of such vesting. 40
- (3) 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 considers necessary to ensure a fair, unbiased and proper exercise of the functions of such person in terms of this Act. 45
- (4) 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. 50
- (5) A person referred to in subsection (1) may not, directly or indirectly as owner, shareholder, director, officer, partner or otherwise—
- (a) be engaged in an aviation undertaking or business; or
 - (b) have an interest in an aviation undertaking or business or an interest in the manufacture or distribution of aviation plant or equipment, except where the distribution is merely incidental to the general merchandising of goods. 55

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

- (a) full disclosure of the circumstances of the possible conflict are made to the Director; and 5
- (b) the assignment has been approved by the Director and carried out in accordance with such conditions as may be specified by the Director.

(7) The approval granted in subsection (3) is open to inspection by the public at the office of the Civil Aviation Authority during business hours.

Limitation of liability 10

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

Ministerial order

78. (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. 20

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

(3) The Civil Aviation Authority must take all the necessary steps to give effect to an order issued under subsection (1). 25

(4) The Minister must, in concurrence with the Minister of Finance, out of monies appropriated by Parliament, compensate the Civil Aviation Authority for any costs incurred as a 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 the action taken by the Civil Aviation Authority in complying with that order. 30

(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. 35

(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.

PART 2

CIVIL AVIATION AUTHORITY BOARD

Establishment of Civil Aviation Authority Board 40

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

Objects of Civil Aviation Authority Board

80. 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; 45
 - (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.

Functions of Civil Aviation Authority Board

- 81.** (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; 5
 - (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; and 10
 - (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; 15
 - (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.
- (3) The Civil Aviation Authority Board generally performs all such acts as in its opinion are necessary for or incidental to the attainment of the objects for which the Civil Aviation Authority Board is established. 20
- (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— 25
- (a) appoint one or more committees consisting of one or more of its members and such other persons as it considers appropriate, to advise it on the exercise and performance of the Civil Aviation Authority Board's powers and functions;
 - (b) delegate or assign to any committee such of its powers, duties and functions as it considers necessary; 30
 - (c) designate a chairperson and, if it considers 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 is not personally liable in respect of anything reflected in any report submitted by the Civil Aviation Authority Board to Parliament or any provincial legislature. 35

Appointment of members of Civil Aviation Authority Board

- 82.** (1) The Civil Aviation Authority Board consists of not more than seven members appointed by the Minister, of whom— 40
- (a) one must be the non-executive chairperson who is appointed for a term of three years and shall on the expiration of such term be eligible for reappointment for one further term only;
 - (b) one must be, if the Minister specifies an office in the Department for the purpose of this subsection, the person for the time being holding that office; 45
 - (c) one must be a person with suitable expertise in corporate governance and human resources management; and
 - (d) two must be persons experienced in civil aviation matters.
- (2) The Director is also a member of the Civil Aviation Authority Board, by virtue of that office. 50
- (3) (a) Members of the Civil Aviation Authority Board contemplated in 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.
- (b) An appointed member of the board may be reappointed for a further period not exceeding three years, in which case the procedure contemplated in subsection (4)(a) does not apply. 55
- (c) Notwithstanding paragraph (b) the Minister may extend the term of office of any appointed member by such further period as it may take to finalise the appointment of a new Civil Aviation Authority Board. 60

- (4) The members contemplated in subsection (1) may 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 has suitable experience or possesses qualifications in respect of one or more of the following:
 - (i) International civil aviation;
 - (ii) domestic civil aviation;
 - (iii) corporate governance;
 - (iv) financial management;
 - (v) business;
 - (vi) environmental management;
 - (vii) economic analysis; and
 - (viii) aviation infrastructure.
- (5) The Minister must within 30 days from the date of appointment of a member of the Civil Aviation Authority Board, notify Parliament of such appointment and publish a notice in the *Gazette*.
- (6) The members of the Civil Aviation Authority Board, with the exception of the member referred to in subsection (1)(b), must not be in the full-time service of the State.
- (7) Members of the Civil Aviation Authority Board must be South African citizens.

Meetings of Civil Aviation Authority Board

- 83.** (1) The meetings of the Civil Aviation Authority Board must be held at a time and place to be determined by the Chairperson and all subsequent meetings must, subject to the provisions of subsection (2), be held at such times and places as the Civil Aviation Authority Board or the Chairperson of the Civil Aviation Authority Board, if authorised thereto by it, may determine.
- (2) The Chairperson may at any time call a special meeting of the Civil Aviation Authority Board, and must call such meeting within 14 days after receipt of a written request signed by not less than three members of the Civil Aviation Authority Board desiring such a meeting to be called.
- (3) Three members of the Civil Aviation Authority Board form a quorum for a meeting.
- (4) The Chairperson presides at all meetings of the Civil Aviation Authority Board at which he or she is present, and if the Chairperson is absent from any meeting, the members present must elect one of their number to preside at such meeting.
- (5) The decision of a majority of the members of the Civil Aviation Authority Board present at any meeting is considered to be a decision of the Civil Aviation Authority Board, and in the event of an equality of votes on any matter the person presiding at such meeting has a casting vote in addition to his or her deliberative vote.
- (6) A member of the Civil Aviation Authority Board may not be present at or take part in the discussion of or vote upon any matter before the Civil Aviation Authority Board in which he or she, or his or her spouse, or his or her life partner or employer, other than the State, or the life partner or employer of his or her spouse, has, directly or indirectly, any pecuniary interest.

Remuneration of appointed members

- 84.** (1) Subject to subsection (2), an appointed member receives from the Civil Aviation Authority such remuneration and allowances as may be determined by the Minister in consultation with the Minister of Finance.
- (2) An appointed member who is in the full-time service of the State is not, in respect of the duties performed by him or her as a member, paid any—
- (a) remuneration in addition to his or her remuneration as an officer of the State;
 - (b) allowance in respect of subsistence and transport at a rate higher than that applicable to him or her as such an officer.

Removal of member of Civil Aviation Authority Board from office

- 85.** (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 murder, robbery, theft, fraud, forgery or uttering a forged document, perjury or any offence involving dishonesty; or 5
 - (ii) of any offence in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), the Companies Act, 1973 (Act No. 61 of 1973), the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), the Public Finance Management Act or of contravening this Act; 10
 - (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; 15
 - (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 of the Civil Aviation Authority Board if that member has— 20
- (a) failed to immediately vacate his or her office in terms of subsection (1);
 - (b) failed to comply with subsection (1) of section 86 of this Act;
 - (c) failed to attend three consecutive meetings of the Civil Aviation Authority Board without prior leave of the Civil Aviation Authority Board; 25
 - (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;
 - (f) become of unsound mind; or 30
 - (g) failed to disclose any conflict of interest as referred to in section 86.
- (3) The Minister may relieve the appointed members of the Civil Aviation Authority Board of their office if—
- (a) the appointed members have failed to substantially comply with the performance agreement entered into in terms of section 87 of this Act; 35
 - (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); 40
 - (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 45
 - (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 14 days of issuing the notification contemplated in paragraph (b)(i) and tabled thereof a copy in Parliament, or, if Parliament is not then in session, has published a copy of that notification in the *Gazette*. 50
- (4) If an appointed member dies, is relieved of his or her office 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 section 82(4)(a) does not apply in respect of an appointment in terms of this subsection. 55
- (5) If all members of the Civil Aviation Authority Board simultaneously vacate their office in terms of subsection (1) or are simultaneously relieved in terms of subsection (2) or (3) by the Minister the procedure contemplated in section 82(4) will apply in respect of the appointment of a Civil Aviation Authority Board. 60

Conflict of interest of members of Civil Aviation Authority Board

86. (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 section 85(1)(a) to (e) to be appointed as a member of the Civil Aviation Authority Board. 5

(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— 10

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

(b) may not attend any meeting of the Civil Aviation Authority Board during the consideration of that matter by the Civil Aviation Authority Board; 15

(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, in connection with that matter, to influence the opinion or vote of any other member of the Civil Aviation Authority Board. 20

(3) In addition to subsection (2), a member must not carry on any activity which is inconsistent with the performance of his or her duties under this Act.

Performance agreement with Civil Aviation Authority Board 25

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

(a) the Minister's requirements in respect of the Civil Aviation Authority Board's scope of business, efficiency and financial performance, and achievement of objectives; 30

(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 35

(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 as the need arises. 40

(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. 45

(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 functions 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 81 of this Act. 50

Business and financial plan

88. (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, taking into account the terms of the performance agreement contemplated in section 87 as the Minister or the Minister of Finance may require. 55

(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 87.

Application of Public Finance Management Act

89. The Public Finance Management Act applies to the Civil Aviation Authority Board. 5

Annual report

90. (1) The Civil Aviation Authority Board must within the time required by the Public Finance Management Act submit to the Minister an annual report pertaining to the financial state of affairs of the Civil Aviation Authority Board as at the end of the immediately preceding financial year, consisting of— 10

- (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 Civil Aviation Authority as at the end of that financial year;
- (b) a report by the Civil Aviation Authority Board in accordance with subsection (2); 15
- (c) a report by the auditor of the Civil Aviation Authority Board in accordance with subsection (3); and
- (d) any other statement or report which the Minister or the Minister of Finance may require. 20

(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 Civil Aviation Authority Board has achieved or advanced its objectives during the financial year concerned, and specifically the detailed objectives of the business and financial plan; 25
- (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 30
- (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 Civil Aviation Authority in accordance with generally accepted accounting practice, as applied on a basis consistent with that of the preceding year; 35
- (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; 40
- (c) the transactions of the Civil Aviation 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, and any applicable directives or regulations made thereunder; 45
- (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 Civil Aviation Authority;
- (e) there are adequate measures and procedures for the proper application of sound economic, efficient and effective management; and 50
- (f) attention should be drawn to any other matter falling within the scope of the auditor's examination which 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. 55

(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 Civil Aviation Authority during business hours. 60

PART 3

DIRECTOR OF CIVIL AVIATION

Appointment of Director of Civil Aviation

- 91.** (1) The Minister appoints the Director of Civil Aviation.
- (2) When appointing the Director in terms of subsection (1) the Minister must have regard to the following factors: 5
- (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 this Act and any other law; 10
 - (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 discretion, to be appropriate.
- (3) The Director holds his or her office for a period not exceeding five years. 15
- (4) The Director is appointed on the conditions, including conditions providing for remuneration and allowances, as the Minister determines upon his or her appointment.
- (5) The Director may be reappointed at the expiry of his or her term of office.
- (6) The Director holds office on a full-time basis.
- (7) The Director must be a South African citizen who is a fit and proper person to hold such office. 20
- (8) 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 receive any benefits or allowances without prior written approval of the Minister.

Duties of Director 25

- 92.** (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 this Act and such powers and duties that may be assigned to him or her by the Minister. 30
- (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 civil aviation safety and security oversight; and
 - (b) to the Civil Aviation Authority Board in respect of the implementation of governance policies as directed by the Civil Aviation Authority Board. 35

Responsibilities of Director

- 93.** (1) Subject to this Act the Director—
- (a) is responsible for the safety and security oversight functions pertaining to civil aviation and must administer and enforce the regulations; 40
 - (b) may take any decision in the exercise by the Civil Aviation Authority of its powers;
 - (c) performs any function and exercises any power assigned to the Director in terms of the agreement referred to in section 100 of this Act;
 - (d) is responsible for the submission to the Minister of an annual report in conjunction with the Civil Aviation Authority Board concerning the activities of the Civil Aviation Authority, other than those set out in section 90; 45
 - (e) is responsible to exercise all powers granted to and duties imposed on the Director in terms of this Act;
- (2) The Director is responsible for— 50
- (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; 55

- (f) the maintenance of discipline; and
- (g) the effective deployment and utilisation of staff to achieve maximum operational results.

Powers of Director

- 94.** (1) The Director may designate one or more— 5
- (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 must sign and issue to each authorised officer, inspector and authorised person appointed by him or her, a document which must state the full name and contain a photograph of such authorised officer, inspector or authorised person and contain a statement indicating that— 10
- (a) such authorised officer, inspector or authorised person has been designated in terms of subsection (1); and 15
 - (b) such authorised officer, inspector or authorised person is empowered to exercise the powers entrusted to him or her in terms of this Act.
- (3) The Director may limit the powers of authorised officers, inspectors or authorised persons when designating such authorised officer, inspector or authorised person in terms of subsection (1)(a). 20
- (4) The qualifications and requirements for persons designated in terms of subsection (1) must be as prescribed.
- (5) The Director may, for the purposes of sections 124, 125, 126 and 127 of this Act, appoint authorised security personnel to render security services.
- (6) Authorised security personnel are appointed on the conditions, including remuneration and allowances, as determined by the Civil Aviation Authority Board. 25
- (7) The powers of authorised security personnel appointed in section 94(5) are as prescribed.

Assignment and delegation by Director

- 95.** (1) The Director may— 30
- (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 35
 - (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 powers and perform 40 the duties personally.

Appointment of acting Director

- 96.** (1) When the Director is absent from the Republic or otherwise unable to fulfil the duties of the Director, he or she must, having regard to section 91(2)(a), (b) and (c), appoint a member of the staff of the Civil Aviation Authority to act as Director. 45
- (2) An acting Director has the responsibilities, powers and functions of the Director.
- (3) The period of appointment of an acting Director in terms of subsection (1) may not exceed 30 days.
- (4) The Minister must appoint a person to act as Director—
- (a) during a vacancy in the office of Director; or 50
 - (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) must not continue to act for more than 12 months. 55
- (6) A person acting as Director for any period longer than 30 consecutive days must be paid such remuneration and allowances as the Minister determines.

Consultation

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

Conflict of interest

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98. 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.

Performance

99. During the term of office of the Director, he or she must not carry on any activity inconsistent with the performance of the Director's duties and obligations under this Act. 10

Performance agreement between Minister and Director

100. (1) The Minister and the Director must upon the appointment of the Director in terms of section 91 enter into a performance agreement in respect of the Director's functions, powers and responsibilities in terms of this Act. 15

(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 business hours.

CHAPTER 7

MONITORING AND ENFORCEMENT OF REGULATORY COMPLIANCE BY CIVIL AVIATION AUTHORITY 20

Monitoring of regulatory compliance

101. (1) For purposes of monitoring regulatory compliance with any legislation administered by the Civil Aviation Authority, a person referred to in section 94(1) may without a warrant enter into any aircraft, place or premises, inspect such aircraft, place or premises, and examine any object and make copies of extracts from any book or document found on such aircraft, place or premises, that the person referred to in section 94 believes on reasonable grounds contains any information relevant to the administration of, and compliance with, this Act. 25

(2) For purposes of monitoring regulatory compliance with any legislation administered by the Civil Aviation Authority, a person referred to in section 94(1) may only enter into a private dwelling with the consent of the occupier or under the authority of a warrant issued in terms of subsection (3)(a) or without a warrant in terms of subsection (3)(b). 30

(3) (a) For purposes of gathering evidence with a view to prosecuting any person for a contravention of any legislation administered by the Civil Aviation Authority, a person referred to in section 94(1) must not exercise any power to— 35

- (i) enter any aircraft or premises;
- (ii) search any aircraft or premises;
- (iii) examine any object; 40
- (iv) make copies of or take extracts from any book or document; or
- (v) seize anything,

unless such person has obtained a warrant permitting any such action from the court that has jurisdiction in the area where the aircraft or premises are situated, and such warrant must only be issued if it appears from information on oath that there are reasonable grounds for believing that an article or thing is upon or in such aircraft or premises, and should specify which of the acts mentioned in this subsection may be performed by the person to whom it is issued. 45

(b) The proviso to paragraph (a) must not apply where the person concerned believe on reasonable grounds that any object, book or document which is the subject of the search may be destroyed, tampered with or disposed of if the provisions of the said proviso are first complied with. 50

- (4) A warrant contemplated in subsection (3)(a) must only be issued if it appears to the court from information on oath that there are reasonable grounds for believing that an exercise of a power referred to in that subsection is necessary for the purpose of appropriate and applicable law enforcement.
- (5) A warrant may be issued on any day and shall be in force until— 5
- (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.
- (6) Any person who acts on the authority of a warrant may use such force as may be reasonably necessary to overcome any resistance against the entry and search, including the breaking of any door or window, but such person must first audibly demand admission and state the purpose for which he or she seeks entry. 10
- (7) A warrant issued in terms of this section must be executed by day unless the person who issued it authorises that it may be executed at night, during hours which are reasonable in the circumstances. 15
- (8) Any person executing a warrant in terms of this section must immediately before commencing with the execution—
- (a) identify himself or herself to the owner or person in control of the premises, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix such copy in a prominent place on the premises; and 20
 - (b) supply such person at his or her request with particulars regarding his or her authority to execute such warrant.
- (9) The powers of authorised officers and inspectors designated in section 94(1)(a) or (b) are prescribed. 25
- (10) An authorised officer and inspector designated in terms of section 94(1)(a) or (b) may be accompanied and assisted by a police officer.

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

- 102.** (1) In addition to any specific power granted to or duty imposed on an authorised officer or inspector under this Act, such authorised officer or inspector may, if it appears to him or her that any aircraft is intended or likely to be flown under circumstances where the flight would involve a contravention of this Act or will cause imminent danger to persons in the aircraft or to persons or property on the ground—
- (a) ground any aircraft which he or she reasonably believes to be unsafe, not duly registered or not airworthy; or 35
 - (b) close any aviation-related facility which he or she reasonably believes does not comply with this Act.
- (2) If an aircraft has been grounded in terms of this section, the aircraft must not be operated until the Director is satisfied that this Act is complied with and approves the lifting of the grounding order, or until such alterations or repairs have been effected which the Director considers necessary to render such aircraft fit for flight. 40

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

- 103.** (1) When it appears to any authorised officer or inspector on reasonable grounds that an aircraft is intended or likely to be flown in circumstances where— 45
- (a) the flight would involve a contravention of this Act; or
 - (b) there is an imminent danger to persons in the aircraft or to persons or property on the ground,
- such officer or inspector may prohibit the holder of an aviation certificate, a permit, or an authorisation to exercise the privileges of such aviation certificate, permit or authorisation. 50
- (2) The prohibition order contemplated in subsection (1) may be withdrawn when the authorised officer or inspector is satisfied that the cause for such prohibition has ceased to exist. 55
- (3) The prohibition in subsection (1) may not be imposed for a period longer than 24 hours.
- (4) The procedure for the issuance of the prohibition order is as prescribed.

CHAPTER 8

PART 1

INTERNAL APPEAL AGAINST DECISIONS OF INSPECTORS AND
AUTHORISED OFFICERS**Decision and procedural rights** 5

104. (1) For the purposes of this Chapter, “decision” has the same meaning as assigned to it 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 this Act which may detrimentally affect the rights of another person, must give such other person— 10

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

(ii) a reasonable opportunity to make representations;

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

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

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

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

105. (1) Any person aggrieved in respect of any decision by an inspector, authorised officer or authorised person in terms this Act may lodge a written appeal with the Director within 30 days after the furnishing of reasons for the decision, in the manner and on payment of the fees prescribed by the Minister.

(2) The Director must within three days of receiving such appeal in writing confirm, amend or withdraw the decision and make a new decision. 25

(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 of receipt of the reasons referred to in subsection 30

(3) to an appeal committee contemplated under section 109.

(5) In adjudicating the appeal contemplated in subsection (2) the Director may afford the appellant—

(a) a reasonable opportunity to make representations;

(b) the opportunity to present and dispute information and arguments; and 35

(c) the opportunity to appear in person.

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

(7)(a) If the Director sets aside any decision of an authorised officer, authorised person or inspector, the fees referred to in subsection (1) shall be refunded to the appellant. 40

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

(8) An appeal lodged in terms of this section does not suspend the decision of the authorised officer, authorised person or inspector. 45

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

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

(i) a decision by the designated body or institution to cancel his or her medical certificate; 50

(ii) a decision by a designated aviation medical examiner, declaring him or her unfit or temporarily unfit;

- (iii) any endorsement made by the designated body or institution on his or her medical certificate; or
 - (iv) any endorsement made by a designated aviation medical examiner on his or her medical certificate,
- may appeal against such decision or endorsement to the Director in the manner and on the payment of the fees prescribed by the Minister. 5
- (b) Such appeal must be lodged within 60 days—
 - (i) after receipt of the reasons for the decision; or
 - (ii) after or he or she became aware of such decision or endorsement.
- (2) An appeal lodged in terms of this section must be considered and decided by the Director assisted by at least two medical practitioners, one of whom must have experience in aviation medicine. 10
- (3) An appeal in terms of subsection (2) must be considered and decided by the Director within 60 days of receipt thereof.
- (4) After considering an appeal the Director may, in agreement with the medical practitioners, confirm the decision in respect of which the appeal was lodged or give such other decision as the Director and the medical practitioners may consider equitable. 15
- (5) Any person affected by a decision referred to in subsection (4) may appeal to any provincial or local division of the High Court having jurisdiction against a decision.
- (6) Subject to this subsection, an appeal referred to in subsection (5) must be noted and proceeded with as if it were an appeal against a judgment of a magistrate's court in a civil case, and all rules applicable to such an appeal must apply to an appeal in terms of this subsection. 20
- (7) The person appealing in terms of subsection (1) is entitled to legal representation.
- (8) The procedure for the lodging and prosecution of appeals in terms of subsection (1) is prescribed. 25
- (9) The Director may on good cause shown condone any non-compliance with the time period referred to in subsection (1).
- (10) An appeal lodged in terms of this section does not suspend the decision or endorsement in respect of which the appeal is lodged. 30

Appeal against decisions of Director

- 107.** (a) Any person aggrieved by any decision taken by the Director other than a decision contemplated in section 106(2) may in the prescribed manner and on the payment of the prescribed fees, file a written appeal with the appeal committee against such decision. 35
- (b) Such appeal must be lodged within 30 days of receipt of the reasons for the decision.

Appeal against decisions of Minister

- 108.** Any person aggrieved by a decision taken by the Minister in terms of this Act may appeal to any provincial or local division of the High Court having jurisdiction against such decision within 30 days of receipt of the reasons for such decision. 40

PART 2

APPEAL COMMITTEES

Composition of appeal committees

- 109.** (1) The Minister must appoint one or more appeal committees to consider and decide appeals. 45
- (2) (a) An appeal committee consists of—
 - (i) a person with not less than ten years' experience as an attorney or advocate, who is the presiding officer; and
 - (ii) two other persons. 50
 - (b) The members of an appeal committee are appointed on a part-time basis.
 - (3) In appointing the members contemplated in subsection (2)(b) the Minister must have regard to such person's technical knowledge, experience in a field related to aviation or any special skills, qualifications, expertise or experience in matters concerning aviation. 55

(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, a member of any committee of the Civil Aviation Authority Board or a civil servant may not be appointed as a member of an appeal committee.

(5) A person appointed under subsection (1) may be disqualified as a member of an appeal committee if he or she has any direct or indirect personal interest in the outcome of that appeal. 5

(6) A member of an appeal committee holds office for a period of three years and is, on the expiration of such member's term of office, eligible for reappointment.

(7) The Minister may terminate the period of office of a member of an appeal committee— 10

(a) if the performance of the member is unsatisfactory; or

(b) if the member, either through illness or for any other reason, is unable to perform the functions of office effectively.

(8) The Minister may, if the performance of an appeal committee is unsatisfactory, terminate the period of office of all the members of that appeal committee. 15

(9) In the event of the termination of office of all the members of an appeal committee, the Minister may appoint persons to act as caretakers until competent persons are appointed in terms of subsection (1).

(10) The Minister must, subject to subsection (3), appoint a temporary replacement member for an appeal committee if, before or during an appeal, it transpires that any member of the appeal committee— 20

(a) has any direct or indirect personal interest in the outcome of that appeal; or

(b) will, due to illness, absence from the Republic or for any other good reason be unable to participate or continue to participate in that appeal. 25

(11) Administrative support for an appeal committee must be provided by officials of the Director-General designated by the Minister.

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

Conditions of service, remuneration, allowances of members of appeal committees and resignation of members 30

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

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

Quorum and meetings of appeal committees 35

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

(2) An appeal under subsection (1) must take place on the date and at the place and time fixed by the appeal committee. 40

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

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

(a) summon any person who may give material information concerning the subject of the hearing or who has in his or her possession or custody or under his or her control any document which has any bearing upon the subject of the hearing, to appear before him or her at a time and place specified in the summons, to be interrogated or to produce that document, and the chairperson may retain for examination any document so produced; 45

(b) administer an oath to or accept an affirmation from any person called as a witness at the hearing; and 50

(c) call any person present at the hearing as a witness and interrogate him or her and require him or her to produce any document in his or her possession or custody or under his or her control.

Decisions of appeal committees 55

112. An appeal committee may confirm, vary or set aside any decision against which an appeal has been lodged in terms of section 107 of this Act.

General provisions regarding appeal committees

- 113.** (1) Appeal committees may admit evidence of facts not before the Director when he or she made the decision which is the subject of the appeal only if—
- (a) there is a reasonable explanation for the failure to timeously inform the Director of the facts; and 5
 - (b) the Director has had sufficient opportunity to verify the facts and to present any evidence to the appeal committee in this regard.
- (2) A decision of an appeal committee contemplated in section 112 must be made in writing within 21 days of the hearing of the appeal and a copy must be furnished to the Director and the appellant. 10
- (3) Any decision signed by the chairperson of an appeal committee is a decision of that appeal committee.
- (4) The chairperson of an appeal committee must maintain a record of the proceedings.
- (5) No person is excused from complying with this Act on the ground that an appeal is pending in terms of this section. 15
- (6) An appeal lodged in terms of this section does not suspend any decision of the Director pending the outcome of this appeal.
- (7) If during the hearing of an appeal the presiding officer or a member of an appeal committee dies or becomes unable to act as presiding officer— 20
- (a) the hearing may, with the consent of the appellant, proceed before another presiding officer or member, as the case may be; or
 - (b) the hearing shall start from the beginning if such consent is not given.
- (8) (a) If an appeal committee sets aside any decision of the Director, the fees referred to in section 107 shall be refunded to the appellant. 25
- (b) If the appeal committee varies any such decision, it may direct that the whole or any part of such fees be refunded to the appellant.
- (9) The appellant is entitled to be represented at an appeal before an appeal committee by an advocate or an attorney.

Appeal against decision of appeal committees 30

- 114.** (1) Any person affected by a decision of an appeal committee may appeal to any provincial or local division of the High Court having jurisdiction.
- (2) An appeal contemplated in subsection (1) must be noted and prosecuted as if it were an appeal against a judgment of a magistrate's court in a civil case and all rules applicable to such an appeal apply to an appeal in terms of that subsection. 35

Administrative work of appeal committees

- 115.** The administrative work of appeal committees must be performed by employees of the Department designated for that purpose by the Director-General.

CHAPTER 9

PROCEDURES FOR IDENTIFYING AND NOTIFYING OF DIFFERENCES, ISSUANCE OF EXEMPTIONS BY DIRECTOR AND INTERCEPTION ORDERS 40

Procedures for identifying and notifying of differences

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

Issuance of exemptions by Director 45

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

- (2) In exempting a person or body contemplated in subsection (1) the Director must have regard to—
- (a) the reasons for the required exemption;
 - (b) any serious and imminent risk to air safety or security;
 - (c) the existence of an equivalent level of safety;
 - (d) any imminent danger to persons or property if the person or body is exempted; and
 - (e) any information at his or her disposal.
- (3) The Director may not grant any exemption under subsection (1) for a period longer than 180 days, which period the Director may on application in writing extend for a further period not exceeding 180 days.
- (4) The procedure for the application for the issuance of exemption certificates or any extension by the Director is as prescribed.

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

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

CHAPTER 10

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

Transfer of certain functions and duties

- 119.** (1) Notwithstanding Articles 12, 30, 31 and 32(a) of the Convention, when an aircraft registered in a Contracting State is operated pursuant to an agreement for the lease, charter or interchange of the aircraft or any similar arrangement by an operator who has its principal place of business or, if he or she has no such place of business, its permanent residence in another Contracting State, the Minister may by agreement with such other State, in accordance with Article 83bis of the Convention, transfer to it all or part of its functions and duties under Articles 12, 30, 31 and 32(a) of the Convention as State of Registry in respect of a South African aircraft.
- (2) The Minister may, by agreement with such other State, in accordance with Article 83bis of the Convention, accept all or part of the functions and duties under Articles 12, 30, 31 and 32(a) of the Convention, as State of Registry in respect of such State's aircraft utilised by a South African Operator.
- (3) The transfer contemplated in subsection (1) shall not have effect in respect of other Contracting States before either the agreement between States in which it is embodied has been registered with the Council of the International Civil Aviation Organisation (ICAO) and made public pursuant to Article 83bis of the Convention or the existence and scope of the agreement have been directly communicated to the authorities of the other Contracting State or States concerned by a State party to the agreement.
- (4) The Director must, when an aircraft registered in a Contracting State is operated pursuant to an agreement for the lease, charter or interchange of the aircraft or any similar arrangement by an operator who has its principal place of business or, if it has no such place of business, its permanent residence, in another Contracting State, recognise the validity of licences and certificates issued by such Contracting State.
- (5) The recognition contemplated in subsection (4) includes the recognition of certificates of airworthiness, personnel licences issued or renewed by the State of Operator, radio licences, crew licences, the transfer of the State of Registry's tasks and functions to another State of Operator, the acceptance of the tasks and functions of a State of Registry from another State and the information of the International Civil Aviation Organization (ICAO) and other States concerned with transfer arrangements.

CHAPTER 11

PART 1

OFFENCES AND PENALTIES

Offences and penalties

- 120.** A person who— 5
- (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 crew member, which is likely to endanger the safety of that aircraft; or 10
 - (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; 15
 - (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, render it incapable of flight or 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; 20
 - (e) communicates information which he or she knows to be false, thereby endangering the safety of an aircraft in service;
 - (f) places at or in any airport, heliport or air navigation facility any device or substance which is calculated to endanger, injure or kill any person, or to endanger, damage, destroy, disrupt, render useless or unserviceable or put out of action any property, vehicle, aircraft, building, equipment or air navigation facility or part thereof, thereby endangering safety at such airport, heliport or aviation navigation facility; 30
 - (g) with the intention to jeopardise—
 - (i) the operation of an air carrier;
 - (ii) the safety of an airport, heliport, aircraft in service, persons or property; or
 - (iii) contaminate any aviation fuel; 35
 - (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 40
 - (j) performs any other act which jeopardises or may jeopardise—
 - (i) the operation of an air carrier;
 - (ii) the safety of an airport, heliport, aircraft in service or of persons or property; or 45
 - (iii) 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 a fine or to imprisonment not exceeding 30 years or to both such fine and imprisonment.

Interference with operation of air carrier, airport or heliport 50

- 121.** (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 section 120 by falsely alleging that any other person has committed or is about to commit any such offence; or 55

- (b) communicating information which he or she knows to be false or incorrect, is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

Nuisance, disorderly or indecent act on board any aircraft

122. (1) A person who, on board any aircraft in service, causes any nuisance or commits 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 to both such fine and imprisonment. 5

(2) Any person who on board any aircraft in service— 10

(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) jeopardises 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 to both such fine and imprisonment. 15

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

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

(a) smokes in a toilet or any other place on the aircraft where smoking is prohibited; 20

(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 25

(d) refuses to obey a lawful instruction given by the commander or pilot-in-command, or given on behalf of the pilot-in-command by a crew member, for the purpose of ensuring the safety of the aircraft or of any person or property on board or for the purpose of maintaining good order and discipline on board the aircraft, 30

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.

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

124. (1) Any person who within an aerodrome and without due authority—

(a) wilfully tampers with, opens, damages, destroys or interferes with the conveyance of cargo, baggage, mail or other goods, or makes away with or interferes with such cargo, baggage, mail or other goods; 35

(b) detains or keeps any cargo, baggage, mail or other goods which ought to have been delivered to another person or which have been found by himself or herself or by any other person; or 40

(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. 45

Prohibition and control in aircraft

125. (1) A person may not at an airport, heliport 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. 50

(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 55

article under this Act or under the Convention must be consigned, such regulation must have preference in the case of a conflict between any requirement of or any condition stipulated by such operator.

(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— 5

- (a) a person may, while on board, perform or attempt to perform any act which may jeopardise the safety of the aircraft or interfere with the flight of the aircraft; or
- (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. 10

Prohibition and control in restricted areas

126. (1) A person may not enter or attempt to enter or be within any restricted area if he or she has in his or her possession or under his or her control any harmful article or if any harmful article has to his or her knowledge been placed within his or her reach and at his or her disposal, unless that person is— 15

- (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 containing a harmful article, provided that such passenger or crew member, before he or she collects the baggage, declares the harmful article to any customs officer where such an officer is on duty in the restricted area or, where such an officer is not available, to an authorised person. 20 25

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

- (a) that a person may, while he or she is within the restricted area, perform or attempt to perform any act which may jeopardise the safety of the airport or of any aircraft, aviation facility of air traffic service unit, or which may interfere with the operation thereof; or 30
- (b) an occurrence which may jeopardise the safety of the designated airport or of any aircraft, aviation facility or air traffic service unit, or which may interfere with the operation, may eventuate from such person, baggage, personal effects, mail, cargo, vehicle or other goods entering the restricted area. 35

(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 consider necessary. 40

Prohibition and control in aviation facilities and air navigation facilities

127. (1) A person may not have access to any aviation facility or air navigation facility without permission from a person in control of that aviation facility or air navigation facility and subject to such conditions as the person in control may stipulate. 45

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

- (a) such person may, while he or she is at or within the aviation facility or air navigation facility, perform or attempt to perform any act which may jeopardise the safety of the aviation facility or air navigation facility or any of its contents, or which may interfere with its operation; or 50
- (b) any occurrence which may jeopardise the safety of the aviation facility or air navigation facility or any of its contents, may eventuate from such access. 55

(3) Any person who contravenes or who fails to comply with section 125, 126, or 127 or who fails to comply with any condition of any permission granted thereunder, is guilty of an offence and on conviction liable to a fine or imprisonment for a period of not exceeding 30 years or to both such fine and imprisonment.

Prohibition of conveyance of armaments, drugs or animal products in aircraft and interference with aircraft in flight in order to exercise criminal jurisdiction

- 128.** (1) (a) For the purposes of this section—
- (i) **“animal product”** means a rhinoceros horn, an elephant tusk or any part thereof which is possessed contrary to the provisions of any other legislation; and 5
 - (ii) **“drugs”** means any drug as defined in section 1 of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992), that has not been acquired, bought or possessed lawfully as contemplated in section 4 of that Act.
- (b) For the purposes of this section the expression ‘armaments’ bears the meaning assigned thereto in section 1 of the Armaments Development and Production Act, 1968 (Act No. 57 of 1968), but with the exception of any such armaments while being conveyed in an aircraft— 10
- (i) on behalf of the State;
 - (ii) by or on behalf of— 15
 - (aa) the Armaments Corporation of South Africa, Limited, referred to in section 2 of the Armaments Corporation of South Africa Limited Act, 2003 (Act No. 51 of 2003), or any undertaking or company established or promoted by the said corporation, or any member, director, employee or agent of that corporation or any such undertaking or company; 20
 - (bb) any person in his or her capacity as an officer or employee of the State;
 - (cc) any person for the purpose of the Defence Act, 2002 (Act No. 42 of 2002); or 25
 - (dd) any person who is entitled by virtue of the Firearms Control Act, 2002 (Act No. 60 of 2002), to possess the armaments concerned or to have the armaments concerned in his or her custody.
- (2) Except with the written permission of the Minister or a person in the service of the State authorised by the Minister and subject to such conditions as the Minister or such a person may determine, no person shall convey any armaments, drugs or animal product in an aircraft. 30
- (3) An aircraft which upon reasonable grounds is believed to be engaged in conveying any armaments, drugs or animal product contrary to subsection (1), is subject to the provisions of the regulations with regard to the identification and interception of aircraft: 35
 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 in Tokyo.
- (4) A Contracting State which is not the State of Registry may not interfere with an aircraft in flight in order to exercise its criminal jurisdiction over an offence committed 40
 on board, except in the following cases:
- (a) The offence has an effect on the territory of such State;
 - (b) the offence has been committed by or against a national or permanent resident of such State;
 - (c) the offence is against the security of such State; 45
 - (d) the offence consists of a breach of any rules or regulations relating to the flight or manoeuvre of an aircraft in force in such State; or
 - (e) the exercise of jurisdiction is necessary to ensure the observance of any obligation of such State under a multilateral international agreement.
- (5) Any authorised person, may, without derogating from any power which he or she may have under the Criminal Procedure Act, at any aerodrome or place in the Republic, 50
 without a warrant—
- (a) search any aircraft which he or she reasonably believes is used or have been used to convey any armaments, drugs or animal product contrary to subsection (1), and any cargo or goods on board such an aircraft; 55
 - (b) seize—
 - (i) any armaments, drugs or animal product found during a search carried out in terms of paragraph (a);
 - (ii) any aircraft on which such armaments, drugs or animal product are found; and 60

- (iii) any other thing which in his or her opinion was used or is intended to be used for the commission, or in connection with the commission, of an offence in terms of this section; and
- (c) arrest any person who is found on board an aircraft contemplated in paragraph (a) and whom he or she reasonably suspects of having committed an offence under this section or of attempting to commit such an offence, and for that purpose section 133(2) applies with the necessary changes. 5
- (6) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding ten years or both such fine and imprisonment. 10
- (7) (a) Any armaments, drugs, animal product, aircraft or other thing seized under subsection (5)(b) must be forfeited to the State unless the court finds—
 - (i) in the case of such armaments, drugs or animal product, that they were not conveyed contrary to subsection (5)(b) and were not intended to be used for any unlawful purpose; or 15
 - (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.
- (b) Anything forfeited in terms of paragraph (a) must be disposed of as the Minister may either generally or in any particular case order. 20
- (c) Paragraph (a), in so far as it relates to an aircraft, does not affect the rights which any person other than a person accused of the contravention referred to in subsection (1) may have to such an aircraft, if he or she, within 30 days of the seizure, satisfies the Minister, by means of proof in writing submitted through the Director, that he or she did not know that the aircraft was used or intended to be used for the commission, or in connection with the commission, of any offence, or that he or she could not prevent such use. 25

Threat to security

- 129.** (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 this purpose, may issue such orders as may be considered necessary to any person or group of persons to counter such action. 30
- (2) An authorised person may take such steps as he or she considers necessary to ensure that an order referred to in subsection (1) is complied with. 35
- (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 an 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). 40

Penalties for contraventions other than sections 120 to 129, 131, 134 and 140, and imposition of administrative penalties 45

- 130.** (1) Any person who contravenes or commits an offence under this Act, the Convention or the Transit Agreement, or who fails to comply with any provision with which it is his or her duty to comply, is, except where another penalty is specially provided, liable on conviction to a fine or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment. 50
- (2) If a person referred to in subsection (1)—
 - (a) is the holder of a licence, certificate or rating issued under this Act, the court convicting him or her may, in addition to any penalty which may be imposed under subsection (1), cancel or suspend for a specified period, or order the endorsement of, such licence, certificate or rating; or 55
 - (b) is not the holder of any such licence, certificate or rating, the court may declare him or her to be disqualified from holding any licence, certificate or rating under this Act for such period as the court considers necessary.

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

(4) The penalties provided in this Act are in addition to, and not substituting any, penalties imposed under any customs law or regulation relating to the importation or exportation of goods, and to persons entering or leaving the Republic by aircraft. 5

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

(6) An administrative penalty referred to in subsection (5) may not exceed the amount prescribed by the Minister for each day during which such failure continues. 10

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

(8) If any person fails to pay an administrative penalty within the specified period, the Civil Aviation Authority may by way of civil action in a competent court recover the amount of the administrative penalty from such person. 15

PART 2

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

Search, seizure and powers of arrest by authorised persons 20

131. (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. 25

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

(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). 30

(5) If an airport manager is of the opinion that it is necessary for the security of the airport that a person or vehicle, or the baggage or personal effects of a person or any vehicle, cargo or goods which are to enter a restricted area be searched, he or she may direct any authorised person to conduct such a search without a warrant. 35

(6) The Minister may direct the manager of any airport, or the manager of any organisation conducting any business at any particular airport, that any person or vehicle or the baggage or personal effects of any person entering any restricted area at the designated airport, or that any vehicle or cargo which is, or any goods which are, to enter a restricted area at the designated airport, be searched by an authorised person without a warrant. 40

(7) Any person who fails to comply with any direction under subsection (6) is guilty of an offence and on conviction liable to a fine or imprisonment for a period not exceeding three years or to both such fine and imprisonment. 45

(8) Any authorised person may, if on reasonable grounds believe that the search is necessary for the security of any airport, aircraft passengers or any aviation facility, or to avoid interference with the operation of an air carrier, airport or an air navigation facility, search, without a warrant, any building, structure, equipment, vehicle, cargo, goods or aircraft. 50

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

(10) An authorised person may, in writing, order a person who refuses to be searched, or to have his or her baggage, vehicle or personal effects searched, to immediately leave the airport or heliport, as the case may be, and not to return for a specified period, which period may not exceed 24 hours. 55

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

(12) Any person who fails to comply with the order contemplated in subsection (10) or (11) is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding three years or to both such fine and imprisonment. 5

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

(14) During any search under this section, only a female authorised person may search a female person, and only a male authorised person may search a male person. 10

Seizure or retention of harmful articles

132. (1) An authorised person may seize any harmful article found during a search carried out under section 131 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. 15

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

Powers of arrest of authorised person 20

133. (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 resistance or to prevent the person concerned from fleeing, and may call on any person to assist him or her to effect the arrest. 25

Call for identification

134. (1) An authorised person or an employee with the written authorisation of the airport or heliport manager or the person in control of the aviation facility, as the case may be, may, if he or she considers it necessary in the interests of security, call upon any person at, in or upon any airport, heliport or air navigation facility to furnish him or her with his or her full names and address. 30

(2) Any person who fails to furnish his or her full names and address or who furnishes false or incorrect information, is guilty of an offence and on conviction liable to a fine or imprisonment for a period not exceeding 30 days or to both such fine and imprisonment. 35

CHAPTER 12

DELEGATION OF POWERS, ACTS AND OMISSIONS TAKING PLACE OUTSIDE REPUBLIC, JURISDICTION, EXTRADITION AND ADMISSIBILITY OF CERTAIN STATEMENTS 40

Delegation of powers

135. The Minister may delegate to the Director or an employee of the Department any power conferred upon him or her by sections 129(1) and 131(2) and (6).

Acts or omissions taking place outside Republic

136. (1) Any act or omission on board of a South African registered aircraft outside the Republic which, if it took place in or over the Republic, would have been an offence, constitutes that offence. 45

(2) Any act contemplated in sections 125, 126, 127 and 128 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 50

person in connection with an act contemplated in section 120, is considered 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 a lessee who has his or her principal place of business or permanent residence in the Republic; 5
- (c) if that person is present in the Republic; or
- (d) if that person is apprehended in the Republic.

Jurisdiction

137. Any offence contemplated in section 136(2) is, for the purposes of jurisdiction of a court, considered to have been committed in any place where the accused happens to be, or is found. 10

Extradition

138. (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— 15

- (a) any aircraft registered in any Convention country must, at any time while that aircraft is in flight, be considered to be within the jurisdiction of that country, irrespective of whether or not it is for the relevant time being also within the jurisdiction of any other country;
- (b) the landing of such aircraft in any other Convention country with the offender still on board will result in the offence being considered to have been committed also in that country; 20
- (c) where the aircraft was leased without crew to a lessee who has the principal place of business or permanent residence in any other Convention country, the offence must be considered to have been committed also in that country. 25

Admissibility of certain statements

139. (1) If in any proceedings, before a court in the Republic for an offence committed on board an aircraft the evidence of any person is required and the court is satisfied that that person cannot be found in the Republic, any statement relating to the subject matter is admissible as evidence if it is made on oath by that person— 30

- (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 must be authenticated by the signature of the officer before whom it was made, who must certify that the person in question was present at the taking of the statement. 35

(3) It is not necessary in any proceedings to prove the signature or official character of the person appearing so to have authenticated any such statement or to have given such a certificate, and such certificate is, unless the contrary is proved, sufficient evidence in any proceedings that the person charged with the offence was present at the making of the statement. 40

CHAPTER 13

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

Powers on board aircraft 45

140. (1) If the commander of an aircraft in flight on reasonable grounds believes that any person on board the aircraft has done or is about to do any act, which jeopardises or may jeopardise the safety of the aircraft, the safety of persons or property on board or the good order and discipline on board the aircraft or 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 must take such measures, including restraint of that person, as may be necessary— 50

- (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 subsection (4). 5
- (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 authorisation of the commander, take in respect of any person on board the aircraft any reasonable measures which he or she believes, on reasonable grounds, that are necessary to protect the safety of the aircraft or of persons or of property on board the aircraft. 10
- (3) Any restraint imposed on any person in terms of subsections (1) and (2), may not be continued with after the aircraft has ceased to be in flight unless—
- (a) for the purposes of disembarking or delivering such person under restraint to the appropriate authorities in terms of subsection (4); or
- (b) the person under restraint has agreed to continue the journey under restraint on board that aircraft. 15
- (4) The commander of an aircraft may, in relation to the person mentioned in subsection (1)—
- (a) disembark that person in any country in which that aircraft may be; and
- (b) deliver that person— 20
- (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. 25
- (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 the appropriate authority in the country of disembarkation and the diplomatic or consular offices of the country of nationality of that person; or 30
- (b) if he or she intends to deliver such a person to the officer indicated in subsection (4)(b), the Commander must give notice of his or her intention including his or her reasons, to that officer, before or as soon as reasonably practicable after landing.
- (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 is liable to a fine or imprisonment for a period not exceeding six months or to both such fine and imprisonment. 35
- (7) Nothing contained in this section shall prejudice the admission as evidence of any statement which is admissible in evidence apart from this section. 40

CHAPTER 14

CIVIL AVIATION SECURITY

Appointment of National Civil Aviation Security Coordinator

- 141.** (1) The Minister appoints the National Civil Aviation Security Coordinator who is an employee of the department. 45
- (2) In the exercise of the powers and performance of duties referred to in this Act the Coordinator is accountable to the Director-General.
- (3) The Coordinator holds his or her office for a period, not exceeding three years, on the conditions, including providing for remuneration and allowances determined by the Public Service Commission upon his or her appointment. 50
- (4) Any further appointment of a Coordinator must be done by the Director-General.
- (5) The Coordinator may be reappointed at the expiry of his or her term of office.
- (6) The Coordinator holds office on a full-time basis.
- (7) The Coordinator must—
- (a) be a South African citizen referred to in section 2 of the South African Citizenship Act, 1995 (Act No 88 of 1995); 55
- (b) be a fit and proper person to hold such office; and
- (c) have a top security clearance.

(8) The 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.

Conflict of interest

142. The 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. 5

Responsibilities 10

143. (1) Subject to this 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 coordination of the National Aviation Security Plan (NASP) in compliance with Annex 17 to the Convention; 15
- (c) monitoring and enforcing the National Aviation Security Plan (NASP);
- (d) developing effective enforcement strategies to secure compliance with aviation security standards;
- (e) assessment of security related decisions taken by industry at all levels for the impact on aviation security; 20
- (f) 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; and 25
- (g) conducting regular and timely assessment of international security developments.

Determinations by Minister

144. (1) 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. 30

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

(3) The Minister must determine which authority is responsible for the development, implementation and maintenance of the national aviation security program.

CHAPTER 15

REGULATIONS 40

Regulations

145. (1) The Minister may make regulations regarding—

- (a) subject to any proclamation issued under section 3(1)(a), the carrying out of, or the giving effect to, the Convention and Transit Agreement;
- (b) the powers or the duties of the Director, including the issue, the amendment or the withdrawal of technical standards for civil aviation, and the determination of the matters in respect of which such standards may be issued; 45
- (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— 50
 - (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 bodies or institutions for the purposes of this Act— 5
 - (i) to exercise control over medical examinations and tests and to exercise control over the persons performing such examinations or tests;
 - (ii) to determine standards for such examinations and tests and to determine standards for the training of such persons; 10
 - (iii) to issue, amend, suspend or withdraw medical certificates and to keep all books or documents regarding such examinations or tests;
 - (iv) to advise the Director on any matter connected with such examinations, tests or persons and on the training of the persons specified in the regulations and any other medical matters as the Director may require; 15
 - and
 - (v) in the absence of such designation such duties to be the responsibility of the Director or any authorised officer designated as such by the Director.
- (f) the designation of one or more bodies or institutions for the purposes of this Act— 20
 - (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; 25
 - (iii) to issue or confirm certificates for the successful completion of such courses, tests or verifications, to suspend or to withdraw such certificates, and to keep all books or documents regarding such courses, tests or verifications; and 30
 - (iv) to advise the Director on any matter connected with such courses, tests, verifications or persons;
- (g) the designation of one or more bodies or institutions for the purposes of this Act—
 - (i) to exercise control over the aviation recreational activities specified in the regulations; 35
 - (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; 40
- (h) the designation of one or more bodies or institutions for the purposes of this Act—
 - (i) to promote aviation safety or to reduce the risk of aircraft accidents or aircraft incidents; and 45
 - (ii) to advise the Director on any matter connected with the promotion of aviation safety or the reduction of the risk of aircraft accidents or aircraft incidents;
- (i) the reporting or the investigation of aircraft accidents or incidents, including— 50
 - (i) the persons by whom or to whom such accidents or incidents must 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 an incident and the granting of authorisation to one or more persons, in so far as it may be necessary for the purposes of the investigation, to have access to such aircraft, to examine or to remove such aircraft, to take steps for its preservation or to deal with it otherwise; and 55
 - (iv) the investigation of any other accident or incident reported in respect of the provision of any air traffic service; 60

- (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; 5
- (k) the requirements to be complied with or the steps to be taken in connection with the conveyance in aircraft of any animal as defined in section 1 of the Animals Protection Act, 1962 (Act No. 71 of 1962), or any fish as defined in section 1 of the Marine Living Resources Act 1998 (Act No. 18 of 1998);
- (l) the delimitation, the designation or the restriction of airspace, including— 10
- (i) the designation of airspace for the purposes specified in the regulations;
 - (ii) the restriction or the prohibition of aircraft from flying within any airspace specified in the regulations;
 - (iii) the conditions under which, the airspace within which or the aerodromes at which aircraft coming from any place outside the Republic lands and the conditions under which, the airspace within which or the aerodromes from which aircraft departs to any place outside the Republic; and 15
 - (iv) the provision of measures to prevent aircraft from flying within any airspace in contravention of any such restriction or prohibition or from entering or leaving the Republic in contravention of this Act; 20
- (m) the provision of general operating rules, flight rules and air traffic rules in respect of civil aviation, including—
- (i) the terminology, including definitions, abbreviations and units of measurement to be used in air and ground operations;
 - (ii) the identification, the classification or the registration of aircraft; 25
 - (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; 30
 - (v) the approval or, where appropriate, the design of letdown and missed approach procedures; 35
 - (vi) the safety or the security of persons and property, including the conditions under which any aircraft must be operated, the conditions under which any act may be performed in or from an aircraft and the maximum hours of duty of flight crew, cabin crew or air traffic service personnel for the purposes of aviation safety; 40
 - (vii) the signals or other communications which may or must be conveyed by or to any aircraft, or any person therein, and the acknowledgement of, or the compliance with, such signals or communications;
 - (viii) the coordination of frequency allocations in bands of the radio spectrum allocated for civil aviation use; 45
 - (ix) the determination of standards for the maintenance of any air navigation infrastructure;
 - (x) the flight inspection of any such air navigation infrastructure;
 - (xi) the classification of airports as schedules facilitated or coordinated airports, including the determination, implementation, monitoring and enforcement of slot coordination rules at coordinated airports; 50
 - (xii) the determination of any special slot coordination rules or requirements necessary during special events or in preparation for such special events hosted in the Republic; and
 - (xiii) the appointment of slot coordinator and slot coordination committee and requirements for such appointment; 55
- (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; 60
 - (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; 5
- (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; 10
- (viii) the imposition of a prohibition of, or the exercising of control over, lights at or in the neighbourhood of any aerodrome; 15
- (ix) the registers, documents or the records to be kept at licensed aerodromes and the manner in which they must be kept;
- (x) the technical, operational, security, safety and environmental management and protection standards in respect of a company airport as defined in section 1 of the Airports Company Act, 1993 (Act No. 44 of 1993), and designated airports; and 20
- (xi) the identification, licensing and certification and the approval of persons engaged in any activity on an aerodrome of management or operational nature that has an impact on the safety of such activity, be it of a specific or a general nature. 25
- (o) the provision or the organisation of air traffic or navigation services, aviation meteorological, security or communication services and any other civil aviation related services, including the licensing or the certification of aircraft design, manufacturing or maintenance organisations or aviation training organisations and the designation of aviation meteorological organisations; 30
- (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; 35
 - (ii) the requirements relating to the airworthiness, the design, the performance, the operation or the maintenance of aircraft, aircraft components or aircraft equipment and the specifications for materials used, or the standards or the processes which must be applied, in the construction of aircraft, aircraft components or aircraft equipment; and 40
 - (iii) the determination of standards for the training, the grading, the licensing or the certification of persons engaged in any such activity; 45
- (q) the manner in which, or the conditions under which, any licence or certificate required by or under this Act, the Convention or Transit Agreement must be issued, renewed or confirmed, including—
 - (i) the courses, the examinations, the inspections, the tests or the verifications which must be passed or measured up to; and 50
 - (ii) the form, the custody, the production, the cancellation, the suspension, the endorsement or the surrender of any such licence or certificate; 50
- (r) the publication of aeronautical information;
- (s) the manuals, the registers, the records or the other documents to be kept for the purposes of this Act, the Convention or Transit Agreement and the manner in which they must be kept; 55
- (t) subject to subsection (2), the fees to be paid in respect of the matters specified in the regulations;
- (u) the exemption from any of the provisions of this Act, the Convention or Transit Agreement of any aircraft operated for experimental purposes, of any other aircraft or of any person in the circumstances or under the conditions specified in the regulations; 60

- (v) subject to the applicable labour laws, the following matters concerning the staff of the Aviation Safety Investigation Board:
- (i) The different categories of salaries and scales of salaries which must apply to the different categories of staff;
 - (ii) the requirements for appointment, promotion, discharge and disciplinary steps; 5
 - (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; 10
 - (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 Safety Investigation Board;
 - (vii) the training of staff, including financial assistance for such training; 15
 - (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; 20
 - (xi) 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; 25
 - (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 must 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; 30
 - (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; 35
 - (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; 40
- (w) national aviation disaster plans and next-of-kin plans in the event of an aircraft 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; 45
- (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; 50
- (z) the calculation of aircraft noise contours and the monitoring of aircraft noise;
- (aa) any fees that may be charged by the Civil Aviation Authority for the provisioning of services to—
 - (i) participants in civil aviation; and 55
 - (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 drawingup of plans with regard to measures which must be adopted in order to promote or ensure the security of civil aviation and the effective application of this Act (hereinafter in this subsection referred to 60

- 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; 5
- (*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 must precede the designation by the Minister, in accordance with definition of ‘designated airport’, of any airport or heliport as a designated airport; 10
- (*gg*) (i) the part of the expenses incurred in connection with the application of a security plan or of this Act which must be met by the State; and
- (ii) the duty of airport managements and air carriers to render available particular equipment at airports and to employ persons for the purposes of the application of the provisions of this Act or any security plan; 15
- (*hh*) (i) fees for the reimbursement of expenses in relation to the provision of security services for aircraft or at airports, heliports or helistops; 20
- (ii) the prohibition or the control of the publication of incidents relating to security or affecting the safe and orderly operation of an air carrier, designated airport, airport or heliport or of an aircraft in flight, or of the publication of any particulars or information relating to any measures dealing with the security of an aircraft, designated airport, airport or heliport or air navigation facility, including particulars or information relating to any plan or program, staff, device or system, agreement or special procedure in connection with security; 25 30
- (*ii*) the serving and consumption of intoxicating liquor on aircraft, the responsibility of air carriers and the training and powers of crew members of aircraft in this regard, the manner in which beverage containers must be stored and handled and the admission to aircraft of persons who are under the influence of intoxicating liquor or drugs; 35
- (*jj*) cargo and cargo security;
- (*kk*) procedures to prevent the disruptive or unruly conduct of passengers;
- (*ll*) the designation of the authorities or entities responsible for the provision of aviation services;
- (*mm*) aircraft accident and incident notification procedures; 40
- (*nn*) the issuing of foreign and other operating certificates;
- (*oo*) the fees payable to the Civil Aviation Authority for the lodging of appeals in terms of Chapter 8; and
- (*pp*) generally, any matter which the Minister may consider necessary or expedient to prescribe in order that the objects of this Act or the Convention may be achieved and the generality of this paragraph must not be limited by the preceding paragraphs. 45
- (2) Different regulations may be made in respect of different air carriers, designated airports, airports, heliports or air navigation facilities, cargo, training and certification of screeners. 50
- (3) A regulation may provide for such incidental, supplementary or transitional matters as may be necessary.
- (4) Any regulation—
- (*a*) only comes into operation on publication in the *Gazette*; and
- (*b*) must be tabled in Parliament by the Minister within 14 days of publication in terms of paragraph (*a*) or, if Parliament is not then in session, at the commencement of its next ensuing session. 55
- (5) A regulation relating to a financial matter may only be made after consultation with the Minister of Finance.
- (6) Any regulation made under this section may prescribe different categories of offences and penalties for the contravention thereof or failure to comply therewith or with any provision of any security plan approved by the Minister, the mode of enforcing

such penalties, the imposition of different penalties in case of a second or subsequent contravention or non-compliance, but no such penalty must exceed the penalties mentioned in section 120.

(7) Any regulation made under this section may prescribe the amount payable upon the failure of any person to pay an administrative penalty in terms of section 130 for every day during which such failure continues. 5

CHAPTER 16

TECHNICAL STANDARDS

Technical standards for civil aviation

146. (1) (a) The Director may issue technical standards for civil aviation on such matters as may be prescribed by regulation. 10

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

(2) The Director may incorporate into a technical standard any international aviation standard or any amendment, without stating the text of such standard or amendment, by mere reference to the title, number and year of issue of such standard or amendment or to any other particulars by which such standard or amendment is sufficiently identified. 15

(3) An officer in the Department designated by the Director for that purpose must keep in his or her office a copy of the complete text of each international aviation standard or each amendment thereof which has been incorporated into any technical standard in accordance with subsection (2), and must at the request in writing of any interested person make such copy available free of charge to such person for inspection or for making a copy, at such person's expense, at a place approved by the said officer. 20

(4) Whenever in any judicial proceedings the question arises whether any writing contains the text of any international aviation standard or any amendment thereof which has been incorporated into any technical standard in accordance with subsection (2), any document purporting to be a statement by a person who in that statement alleges that he or she is a person in the service of the Authority and that a particular writing described in or attached to the statement contains the said text is, on its mere production at those proceedings by any person, proof of the facts stated therein. 25

(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; 35
- (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. 40

CHAPTER 17

TRANSITIONAL PROVISIONS, REPEAL AND AMENDMENT OF LAWS AND SHORT TITLE AND COMMENCEMENT

Transitional provisions

147. (1) Section 14 of the South African Civil Aviation Authority Act, 1998 (Act No. 40 of 1998), and any proclamation and regulation made under the Aviation Act 1962 (Act No. 74 of 1962), Civil Aviation Offences Act, 1972 (Act No. 10 of 1972), and the South African Civil Aviation Authority Act 1998 (Act No. 40 of 1998), shall remain in force until replaced by an Act of Parliament, proclamation or regulation made under this Act, as the case may be. 45

(2) Any authorisation, certificate, licence, permission, permit or registration issued in terms of an Act repealed by section 149 which was valid immediately before the commencement of this Act, remains valid for the period specified in the authorisation, certificate, licence, permission, permits, registration or determination, as the case may be, unless terminated, cancelled or suspended in terms of this Act. 50 55

(3) Any person who occupied a post or served in a particular capacity in terms of an Act repealed by section 149 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. 5

(5) Any power exercised or duty performed by the chief executive officer or the Commissioner for Civil Aviation by virtue of a provision of an Act administered by the Authority and in terms of section 4(2) of the South African Civil Aviation Authority Act, 1998 (Act No. 40 of 1998), immediately before the commencement of this Act, must be considered as having been exercised or performed by the Director. 10

(6) On the date of commencement of this Act—

(a) all assets, liabilities, rights and obligations of the South African Civil Aviation Authority, as it existed immediately prior to the commencement of this Act, pass to the Civil Aviation Authority established by this Act; and 15

(b) subject to this Act, anything done by or on behalf of the South African Civil Aviation Authority is deemed to have been done by the Civil Aviation Authority. 20

Matters pending under previous Acts

148. (1) The promulgation of this Act does not affect any proceedings instituted in terms of the previous Acts administered by the Civil Aviation Authority which were pending in a court of law immediately before the date of commencement of this Act, and such proceedings must be disposed of in the court in question as if this Act had not been passed. 25

(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. 30

(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. 35

(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. 40

(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 regarded as having been performed by the Director. 45

(7) Any appointment made in terms of any repealed Act must be regarded as having been done in terms or by virtue of this Act.

Amendment and repeal of laws

149. (1) The laws mentioned in Schedule 1 are hereby amended to the extent set out in the third column of that Schedule. 50

(2) The laws specified in Schedule 2 are hereby repealed to the extent set out in the third column of that Schedule.

Act binding on State

150. This Act binds the State.

Short title and commencement 55

151. (1) This Act is called the Civil Aviation Act, 2008, and comes 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 AMENDED

(Section 149)

No. and Year of Act	Short Title	Extent of amendment	5
Act 115 of 1990	Air Services Licensing Act, 1990	<p>1. The amendment of section 1 by—</p> <p>(a) the deletion of the definition of “Au- thority”;</p> <p>(b) the substitution for the definition of “authorised officer” of the following definition:</p> <p>“ ‘authorised officer’ means an authorized officer as defined in section 1 of the [Aviation Act, 1962 (Act No 74 of 1962)] <u>Civil Aviation Act, 2008;</u>”;</p> <p>(c) the substitution for the definition of “authorised person” of the following definition:</p> <p>“ ‘authorised person’ means an authorized person as defined in section 1 of the [Aviation Act, 1962] <u>Civil Aviation Act, 2008;</u>”;</p> <p>(d) the deletion of the definition of “Chief Executive Officer”;</p> <p>(e) the insertion after the definition of “authorised person” of the following definition:</p> <p>“‘Civil Aviation Authority’ means the South African Civil Aviation Authority as defined in section 1 of the Civil Aviation Act, 2008;”.</p> <p>(f) the deletion of the definition of “Commissioner for Civil Aviation”;</p> <p>(g) the insertion after the definition of “department” of the following definition:</p> <p>“ ‘Director’ means the Director for <u>Civil Aviation as defined in section 1 of the Civil Aviation Act, 2008;</u>”;</p>	<p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p>
Act 41 of 1998	South African Civil Aviation Authority Levies Act, 1998	<p>1. The amendment of section 1 by—</p> <p>(a) the deletion of the definition of “Au- thority”;</p> <p>(b) the insertion before the definition of “levy” of the following definition:</p> <p>“ ‘Civil Aviation Authority’ means the South African Civil Aviation Authority as defined in section 1 of the <u>Civil Aviation Act, 2008;</u>” and</p> <p>(c) the substitution for the words preceding paragraph (a) of the definition of “levy” of the following words:</p> <p>“ ‘levy’ means an amount payable at intervals or at specified times by participants in civil aviation, as defined in section 1 of the [South African Civil Aviation Authority Act, 1998] <u>Civil Aviation Act, 2008,</u> on one or more or all of the following criteria, namely—”.</p> <p>2. The substitution for the word “Authority”, wherever it appears in the Act, of the words “Civil Aviation Authority”.</p>	<p>45</p> <p>50</p> <p>55</p> <p>60</p> <p>65</p>

No. and Year of Act	Short Title	Extent of amendment	
		<p>(h) the substitution for the definition of “inspector” of the following definition: “‘inspector’ means an inspector as defined in section 1 of the [Aviation Act, 1962 (Act No. 74 of 1962)] <u>Civil Aviation Act, 2008.</u></p> <p>2. (a) The substitution for the word “Authority”, wherever it occurs in the Act, of the words “Civil Aviation Authority”; (b) the substitution for the words “Chief Executive Officer”, wherever they occur in the Act, of the word “Director”; and (c) the substitution for the words “Commissioner of Civil Aviation”, wherever they occur in the Act, of the word “Director”.</p>	5 10 15
Act 59 of 1993	Convention on The International Recognition of Rights In Aircraft Act, 1993	<p>1. The amendment of section 1 by— (a) the deletion of the definition of “Commissioner for Civil Aviation”; and (b) the insertion after the definition of “Convention” of the following definition: “‘Director’ means the Director for <u>Civil Aviation as defined in section 1 of the Civil Aviation Act, 2008;</u>”.</p> <p>2. The substitution for the words “Commissioner of Civil Aviation”, wherever they occur in the Act, of the word “Director”.</p>	20 25 30
Act 60 of 1993	International Air Services Act, 1993	<p>1. The Amendment of section 1 by— (a) the substitution for the definition of “authorised officer” of the following definition: “‘authorised officer’ means an authorized officer as defined in section 1 of the [Aviation Act, 1962 (Act No 74 of 1962)] <u>Civil Aviation Act, 2008;</u>”; (b) the substitution for the definition of “authorised person” of the following definition: “‘authorised person’ means an authorized person as defined in section 1 of the [Aviation Act, 1962] <u>Civil Aviation Act, 2008;</u>”; (c) the deletion of the definition of “Commissioner for Civil Aviation”; (d) the insertion after the definition of “council” of the following definition: “‘Director’ means the Director for <u>Civil Aviation as defined in section 1 of the Civil Aviation Act, 2008;</u>”. (e) the substitution for the definition of “inspector” of the following definition: “‘inspector’ means an inspector as defined in section 1 of the [Aviation Act, 1962 (Act No. 74 of 1962)] <u>Civil Aviation Act, 2008.</u></p> <p>2. The substitution for the words “Commissioner of Civil Aviation”, wherever they occur in the Act, of the word “Director”.</p>	35 40 45 50 55 60 65

SCHEDULE 2**LAWS REPEALED**

No. and year of Law	Short Title	Extent	
Act 74 of 1962	Aviation Act, 1962	The whole	5
Act 10 of 1972	Civil Aviation Offences Act, 1972	The whole	
Act 40 of 1998	South African Civil Aviation Authority Act, 1998	The whole	10

SCHEDULE 3**CONVENTION ON INTERNATIONAL CIVIL AVIATION (articles 1-96)****PREAMBLE**

WHEREAS the future development of international civil aviation can greatly help to create and preserve friendship and understanding among the nations and peoples of the world, yet its abuse can become a threat to the general security; and 5

WHEREAS it is desirable to avoid friction and to promote that co-operation between nations and peoples upon which the peace of the world depends;

THEREFORE the undersigned governments having agreed on certain principles and arrangements in order that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically; 10

Have accordingly concluded this Convention to that end.

PART I**AIR NAVIGATION (articles 1-42) 15****CHAPTER I****GENERAL PRINCIPLES AND APPLICATION OF THE CONVENTION (articles 1-4)****Article 1**

Sovereignty—The contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory. 20

Article 2

Territory—For the purposes of this Convention the territory of a State shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State. 25

Article 3**Civil and state aircraft—**

- (a) This Convention shall be applicable only to civil aircraft, and shall not be applicable to state aircraft.
- (b) Aircraft used in military, customs and police services shall be deemed to be state aircraft. 30
- (c) No state aircraft of a contracting State shall fly over the territory of another State or land thereon without authorization by special agreement or otherwise, and in accordance with the terms thereof.
- (d) The contracting States undertake, when issuing regulations for their state aircraft, that they will have due regard for the safety of navigation of civil aircraft. 35

Article 3bis

- (a) The contracting States recognize that every State must refrain from resorting to the use of weapons against civil aircraft in flight and that, in case of interception, the lives of persons on board and the safety of aircraft must not be endangered. This provision shall not be interpreted as modifying in any way the rights and obligations of States set forth in the Charter of the United Nations. 40
- (b) The contracting States recognize that every State, in the exercise of its sovereignty, is entitled to require the landing at some designated airport of a civil aircraft flying above its territory without authority or if there are 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 45 50

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, 5
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 10
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 15
International Civil Aviation Organization.
- (b) Each contracting State reserves also the right, in exceptional circumstances or 20
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. 20
- (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 25
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 30
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 35
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 40
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 45
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. 50
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 55
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. 5

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. 10 15

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 20
- (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. 25

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. 30

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. 35

CHAPTER III**NATIONALITY OF AIRCRAFT (articles 17-21)** 40**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. 45

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. 50

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 45

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; 50
- (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. 55

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. 5
- (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. 10

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. 15

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. 20
- (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. 25

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. 30

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. 35

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. 45
- (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 50

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 5

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 10
(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. 15

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— 20

- (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; 25
- (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, 30
- (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 35

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. 40
45

Article 39 50

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. 5

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. 10

Article 41

15

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. 20

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. 25

PART II

THE INTERNATIONAL CIVIL AVIATION ORGANIZATION (articles 43-66)

CHAPTER VII

THE ORGANIZATION (articles 43-47)

30

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. 35

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— 40

- (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; 45
- (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. 5

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. 10 15

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. 20

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. 25

CHAPTER VIII

THE ASSEMBLY (articles 48-49)

Article 48 30

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. 35
- (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. 40

Article 49

Powers and duties of Assembly

The powers and duties of the Assembly shall be to— 45

- (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; 50

- (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; 5
- (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; 10
- (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. 15

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. 20
25
- [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. 30
35
- (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— 45
- (a) convene meetings of the Council, the Air Transport Committee, and the Air Navigation Commission;
 - (b) serve as representative of the Council; and 50
 - (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. 5

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. 10

Article 54

Mandatory functions of Council

The Council shall— 15

- (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; 20
- (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; 25
- (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; 30
- (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; 35
- (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; 40
- (m) consider recommendations of the Air Navigation Commission for amendment of the Annexes and take action in accordance with the provisions of Chapter XX; 45
- (n) consider any matter relating to the Convention which any contracting State refers to it. 55

Article 55

Permissive function of Council

The Council may— 50

- (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; 55

- (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; 5
- (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; 10
- (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. 15

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. 20

Article 57

25

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; 30
- (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

35

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. 40

Article 59

International character of personnel

45

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. 50

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. 5
- (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. 10

PART III**INTERNATIONAL AIR TRANSPORT (articles 67-79)****CHAPTER XIV****INFORMATION AND REPORTS (articles 67) 15****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. 20

CHAPTER XV**AIRPORTS AND OTHER AIR NAVIGATION FACILITIES (articles 68-76)****Article 68****Designation of routes and airports 25**

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 30**

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. 35

Article 70**Financing of air navigation facilities 40**

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. 45

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. 5

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. 10

Article 73**Expenditure and assessment of funds** 15

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. 20

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. 25 30

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. 35

Article 76 40**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. 45

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. 5

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. 10

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. 20

PART IV

FINAL PROVISIONS (articles 80-96)

25

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. 30

Article 81

Registration of existing agreements

All aeronautical agreements which are in existence on the coming into force of this Convention, and which are between a contracting State and any other State or between an airline of a contracting State or the airline of any other State, shall be forthwith registered with the Council. 40

Article 82

Abrogation of inconsistent arrangements

The contracting States accept this Convention as abrogating all obligations and understandings between them which are inconsistent with its terms, and undertake not to 45

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 10

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 35

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. 5
- (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. 10
- (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. 15

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. 20
- (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. 25

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. 30

Article 93bis

Termination or suspension of membership

- (a) Notwithstanding the provisions of Articles 91, 92 and 93 above: 35
- (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; 40
- (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. 45
- (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. 50
- (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. 5
- (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. 10

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. 15
- (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. 20

CHAPTER XXII**DEFINITIONS (article 96)****Article 96**

- For the purpose of this Convention the expression— 25
- (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. 30
- (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. 35

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. 40

SCHEDULE 4**INTERNATIONAL AIR SERVICES TRANSIT AGREEMENT 45**

The States which sign and accept this International Air Services Transit Agreement, being members of the International Civil Aviation Organization, 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; 5
- (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. 10

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. 15

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. 20

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: 25

- (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. 30 35

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. 40

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 45 50

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. 5

ARTICLE III 10

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. 15

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. 20

ARTICLE V

For the purposes of this Agreement, 'territory' shall be defined as in Article II of the above-mentioned Convention. 25

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. 30

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. 35

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. 40

IN WITNESS WHEREOF, the undersigned, having been duly authorized, sign this Agreement on behalf of their respective governments on the dates appearing opposite their respective signatures. 45

DONE at Chicago the seventh day of December, 1944, in the English language. A text drawn up in the English, French and Spanish languages, each of which shall be of equal authenticity, shall be opened for signature at Washington, D.C. Both texts shall be deposited in the archives of the Government of the United States of America, and 50

certified copies shall be transmitted by that Government to the Governments of all the States which may sign or accept this Agreement.

SCHEDULE 5

Convention on International Interests in Mobile Equipment Act 2007 (Act No. 4 of 2007)

Convention on the International Recognition of Rights in Aircraft Act, 1993 (Act No. 59 of 1993).

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MEMORANDUM ON THE OBJECTS OF THE CIVIL AVIATION BILL, 2008

1. BACKGROUND

Purpose:

The purpose of the Bill is threefold. Firstly it seeks to give effect to South Africa's obligation to comply with the Regulations of the International Civil Aviation Organization (ICAO) and to address the comments and concerns raised by the recent reassessment report of the Federal Aviation Administration. In the second instance, the Bill seeks to harmonise the current civil aviation legislation. In the third instance, the Bill is aimed at compliance with South Africa's international obligations relating to applicable international conventions and international agreements.

The Bill repeals the following Acts:

1. Aviation Act, 1962 (Act 74 of 1962);
2. Civil Aviation Offences Act, 1972 (Act 10 of 1972);
3. South African Civil Aviation Authority Act, 1998 (Act 40 of 1998).

Key Provisions of the Bill:

The Bill provides for—

- (i) the establishment of an Aviation Safety Investigation Board;
- (ii) the appointment of a National Civil Aviation Security Coordinator with functions in line with the Regulations of the International Civil Aviation Organization (ICAO);
- (iii) the restructuring of the South African Civil Aviation Authority and the Civil Aviation Authority Board to define the objects of both the Board and the Authority;
- (iv) the appointment of the Director for Civil Aviation and the requirements for such appointment, including the defining of the duties, responsibilities and powers of the Director;
- (v) the monitoring and enforcement of regulatory compliance by differentiating between administrative inspections and regulatory compliance with any legislation;
- (vi) exceptional circumstances where an aircraft or any facility may be grounded or closed by an authorised officer or inspector as well as the prohibition on the exercising of certain privileges of any aviation certificate, permit or authorisation;
- (vii) procedures for identifying and notifying of differences, interception orders and exemptions;
- (viii) offences and penalties as well as powers of the commander of an aircraft;
- (ix) defining of technical standards for civil aviation and the procedures in connection with such technical standards that may be required from time to time; and
- (x) transitional provisions relating to matters pending or incidental to the repeal and amendment of legislation.

2. CLAUSE-BY-CLAUSE EXPLANATION:

Clause 1 provides the definitions of the Bill. Some definitions that require special mention are the following:

“Aviation Safety Investigation Board”: This definition refers to the agency which is established in terms of section 10 of the Bill.

“Director”: The Bill makes provision for the change of the designation of the current Commissioner of the South African Civil Aviation Authority, changing it to Director.

“Director of Investigations”: The definition refers to the new position of Director of Investigations, who is appointed in terms of section 25 of the Bill and who operates under the Aviation Safety Investigation Board.

Clause 2 explains the application of the Act.

Clause 3 deals with the Minister's powers to issue proclamations to give effect to the Convention and the Transit Agreement by, *inter alia*, issuing proclamations.

Clause 4 provides for ministerial functions in compliance with the Act, Convention and Transit Agreement, especially in respect of the designation of such functions.

Clause 5 confirms the Conventions in Schedules 3 and 4 having force of law in the Republic.

Clause 6 empowers the Minister to acquire land or rights in respect of licensed airports.

Clause 7 enables the Minister of Minerals and Energy to permit the use of land for the establishment of airports or landing places, under specific conditions.

Clause 8 restricts the responsibility for damage caused by, *inter alia*, aircraft in flight.

Clause 9 provides for the application of the chapter dealing with the Accident Safety Investigation Board.

Clause 10 provides for the establishment of the Aviation Safety Investigation Board.

Clause 11 sets out the objectives of the Aviation Safety Investigation Board. This clause enables the Aviation Safety Investigation Board to investigate aircraft accidents and incidents in compliance with Annex 13 to the Convention. Of importance is that it is not the function of the Aviation Safety Investigation Board to assign fault or blame during its investigations.

Clause 12 sets out the jurisdiction of the Aviation Safety Investigation Board.

Clause 13 makes provision for the co-ordination of investigations between the Aviation Safety Investigation Board and any other Department, and makes provision for the requirements of the South African Police Service to take precedence, when applicable.

Clause 14 compels the Aviation Safety Investigation Board to comply with international agreements and conventions, as well as investigation procedures followed by judicial inquests.

Clause 15 provides for the appointment of the members of the Aviation Safety Investigation Board, as well as the term of office applicable.

Clause 16 sets out the procedures for appointing members of the Aviation Safety Investigation Board, emphasising public participation in the nomination of suitable persons, as well as the knowledge and skills level of such members.

Clause 17 deals with the remuneration of members.

Clause 18 sets out the duties of the Chairperson of the Aviation Safety Investigation Board. The Chairperson will, *inter alia*, be responsible for the managing of personnel matters and the management of the Aviation Safety Investigation Board.

Clause 19 enables the Chairperson of the Aviation Safety Investigation Board to delegate his or her powers.

Clause 20 enables the Chairperson of the Aviation Safety Investigation Board to convene meetings and establishes the quorum for such meetings.

Clause 21 deals with the expenditure in connection with the execution of the functions of the Aviation Safety Investigation Board.

Clause 22 confirms that the Public Finance Management Act, 1999, is applicable to the Aviation Safety Investigation Board.

Clause 23 restricts conflict of interest of a member of the Aviation Safety Investigation Board, and enables the Minister to approve specific interests in

civil aviation activities. It also provides for the disposal of any interest within three months after the vesting of such interest by a member of the Aviation Safety Investigation Board.

Clause 24 sets out the duties of members, with specific reference to the establishment of policies and rules and the specific classes of aircraft accidents and incidents to be investigated.

Clause 25 enables the Aviation Safety Investigation Board to appoint members of staff to enable it to fulfil its functions according to the Act.

Clause 26 enables the Aviation Safety Investigation Board to enter into agreements with Departments providing for the co-ordination of activities with such Departments.

Clause 27 enables the payment of reasonable travel and other expenses of members of the Aviation Safety Investigation Board, as well as the remuneration of such members.

Clause 28 confirms the independence and impartiality of the Aviation Safety Investigation Board in order to ensure its credibility.

Clause 29 sets out the functions of the Aviation Safety Investigation Board, thereby confirming its investigative, advisory, oversight and reporting functions. It provides for the investigation of aircraft accidents and aircraft incidents in compliance with Annex 13 to the Convention, as well as the submission of reports after the completion of an investigation.

Clause 30 sets out the powers of the Aviation Safety Investigation Board, which includes the collection and dissemination of information, the summoning and examination of witnesses and documents, as well as the making of rules in relation to the notification of aircraft accidents and incidents.

Clause 31 sets out the powers and reporting structure of the Director of Investigations.

Clause 32 makes provision for the designation of investigators by the Director of Investigations to fulfil the functions of the Aviation Safety Investigation Board. It also sets out the powers of investigators authorising such investigator to, *inter alia*, have access to aircraft which had been involved in aircraft accidents or incidents, obtaining information and taking statements from persons, and generally provides for powers to enable investigators to perform their duties in terms of this Act.

Clause 33 provides investigators with the power to search and seize documentation and objects.

Clause 34 empowers investigators to test things and objects which had been seized by investigators.

Clause 35 compels an investigator to produce a certificate of appointment before acting under that provision.

Clause 36 compels an investigator to return any thing or object seized under the Act.

Clause 37 deals with the powers of a person designated to conduct a public inquiry.

Clause 38 compels a Department to supply the Aviation Safety Investigation Board with particulars of any aircraft accident or aircraft incident in the event of such Department having a direct interest in such event.

Clause 39 provides for the notification of a Department by the Aviation Safety Investigation Board of the steps to be taken in the event of an aircraft accident or aircraft incident where such Department has a direct interest.

Clause 40 provides for the attendance and removal of observers from any aircraft accident or aircraft incident investigation.

Clause 41 provides for the procedure to be followed to ensure the right of affected persons to make representations in respect of reports issued by the Aviation Safety Investigation Board.

Clause 42 prescribes the manner in which representations are to be dealt with.

Clause 43 compels the Aviation Safety Investigation Board to submit a report to a Minister of a Department having a direct interest in the findings of a report, should the Aviation Safety Investigation Board be of the opinion that urgent action is required from such Department.

Clause 44 provides for the reply of a Minister receiving a report referred to in Clause 43 above and allows the Aviation Safety Investigation Board to extend the period granted for a Minister to reply to the findings and recommendations of a report.

Clause 45 empowers the Aviation Safety Investigation Board to designate certain of its powers to persons.

Clause 46 deals with the on-board recording of an aircraft and the definition thereof.

Clause 47 deals with the privilege for on-board recordings relating to any legal, disciplinary or other proceedings.

Clause 48 deals with the access by the Aviation Safety Investigation Board to on-board recordings that relates to an aircraft accident or incident.

Clause 49 empowers the Aviation Safety Investigation Board to use on-board recordings in the interest of aviation safety.

Clause 50 provides for the access to on-board recordings by peace officers, judicial inquests and other investigators.

Clause 51 describes the power of the Court or a judicial inquest with regard to on-board recordings, as well as the procedures to be followed.

Clause 52 provides for the prohibition of the use of on-board recordings under certain circumstances.

Clause 53 provides for the definition of “communication records” and for the prohibition of the use of any “communication records”.

Clause 54 provides for the interpretation of “statements” and the privilege of such statements.

Clause 55 provides for access to statements by judicial inquests and other investigators.

Clause 56 empowers a Court to examine statements and, if found that the public interest outweighs the privilege attached to such statement, to order the production of such statement.

Clause 57 prohibits the use of a statement against the person who made it, except under specific circumstances.

Clause 58 provides for the reporting of aircraft accidents and incidents, the use of reports by the Aviation Safety Investigation Board in the interest of Aviation Safety and the rules for the protection of the identity of persons who report aircraft accidents or incidents.

Clause 59 provides for the privileged nature of certain information in a report to the Aviation Safety Investigation Board.

Clause 60 provides for the prohibition on the use of a report made to the Aviation Safety Investigation Board under a voluntary reporting system.

Clause 61 provides for the compellability of an investigator to appear as a witness in any proceedings.

Clause 62 provides for the admissibility of any opinion of a member or investigator in any legal, disciplinary or other proceedings.

Clause 63 provides for the Aviation Safety Investigation Board to make rules prescribing the manner in which it shall carry out its powers, duties and functions under the Act, for publication of the proposed rules in the *Gazette* and the opportunity of interested persons to make representations prior to the effective date thereof, and for certain exceptions in respect of the publication of proposed rules.

Clause 64 provides for offences with regard to certain functions of the Aviation Safety Investigation Board, as well as penalties associated therewith.

Clause 65 deals with the admissibility of certain documents at any prosecution under this Act, the discovery of reports or documents prior to being received in evidence and the timeframe associated therewith, and provides for the cross-examination of any person who appears to have signed any report or document.

Clause 66 makes provision for transitional arrangements with regard to investigations prior to the coming into operation of the Act.

Clause 67 restricts the liability of members, staff, accredited representatives, experts and advisers of the Aviation Safety Investigation Board.

Clauses 68 and 69 provide for the appointment of Ministerial Boards of Enquiry with regard to specific aircraft accidents and aircraft incidents, as well as the powers of such Ministerial Boards of Enquiry.

Clause 70 provides for the establishment of the Civil Aviation Authority.

Clause 71 provides for the objects of the Civil Aviation Authority, which 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 function and development of the civil aviation industry; and
- (d) promote civil aviation safety and security.

Clause 72 provides for the specific functions of the Civil Aviation Authority.

Clause 73 provides for the appointment of staff for the Civil Aviation Authority to enable it to fulfil its functions.

Clause 74 confirms the sources of funding of the Civil Aviation Authority.

Clause 75 places a restriction on the use of the name of South African Civil Aviation Authority.

Clause 76 provides for the conflict of interest regarding any person appointed to perform any function in terms of the Act or regulations.

Clause 77 provides for the limitation of liability of employees of the Civil Aviation Authority in respect of anything done or omitted in good faith in the exercise of the provisions of the Act.

Clause 78 provides for the issuing of ministerial orders in respect of aviation matters by the Minister, when necessary to do so in the interest of aviation safety and security or the discharge of an international obligation of the State.

Clause 79 makes provision for the establishment of the Civil Aviation Authority Board.

Clause 80 provides for the objects of the Civil Aviation Authority Board, which 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 resource policies and strategies of the Civil Aviation Authority; and
- (c) set strategic goals for the Civil Aviation Authority.

Clause 81 provides for the functions of the Civil Aviation Authority Board.

Clause 82 provides for the appointment of members of the Civil Aviation Authority Board, as well as the qualifications of such members.

Clause 83 makes provision for meetings of the Civil Aviation Authority Board and procedures to be followed.

Clause 84 provides for the remuneration of appointed members.

Clause 85 provides for the removal of a member or members of the Civil Aviation Authority Board by the Minister and sets out the circumstances under which a member may be removed.

Clause 86 provides for conflict of interest provisions for members appointed to the Civil Aviation Authority Board.

Clause 87 provides for the entering into performance agreements between the Minister and the Civil Aviation Authority Board.

Clause 88 compels the Civil Aviation Authority Board to submit a business and financial plan on an annual basis.

Clause 89 provides for the application of the Public Finance Management Act, 1999, to the Civil Aviation Authority Board.

Clause 90 compels the Civil Aviation Authority Board to submit an annual report to the Minister pertaining to the financial state of affairs of the Civil Aviation Authority Board.

Clause 91 provides for the appointment of the Director of Civil Aviation, including his or her qualifications.

Clause 92 provides for the duties of the Director.

Clause 93 provides for the responsibilities of the Director.

Clause 94 provides for the powers of the Director, which includes the designation of powers to inspectors, authorised officers and authorised persons.

Clause 95 provides for the assignment of the powers or duties by the Director.

Clause 96 deals with the appointment of an acting Director and the circumstances under which such person may be appointed.

Clause 97 provides for the compulsory consultation by the Director in performing his or her duties with relevant persons, bodies and organisations engaged in civil aviation.

Clause 98 provides for conflict of interest provisions with regard to the Director.

Clause 99 provides for the proper performance of any activity which shall not be inconsistent with the Act by the Director.

Clause 100 provides for the entering into performance agreements between the Minister and the Director concerning the Director's functions, powers and responsibilities in terms of this Act.

Clause 101 provides for the monitoring of regulatory compliance with any legislation administered by the Civil Aviation Authority.

Clause 102 provides for the grounding of an aircraft and the closing of a facility by an authorised officer or inspector under certain circumstances.

Clause 103 prohibits the exercising of certain privileges in respect of any aviation certificate, permit or authorisation by authorised officers or inspectors.

Clause 104 provides for internal appeal procedures, inter alia, defining which decisions are subject to the appeals procedure and the procedural rights with regard to decisions detrimentally affecting the rights of any person.

Clause 105 provides for appeal against decisions of authorised officers, authorised persons and inspectors.

Clause 106 provides for appeals against the refusal, cancellation or endorsement of a medical certificate or declaration of unfitness as well as procedures associated therewith.

Clauses 107 and 108 deal with appeals against decisions of the Director and the Minister, respectively.

Clause 109 provides for the appointment of appeal committees, the composition of such committees and related matters.

Clause 110 provides for the conditions of service, remuneration and allowances of members of appeal committees.

Clause 111 provides for the quorum and meetings of appeal committees.

Clause 112 provides for the decision of appeal committees.

Clause 113 provides for general provisions regarding appeal committees.

Clause 114 provides for appeals against the decision of appeal committees.

Clause 115 confirms that the performance of the administrative work of appeal committees shall be undertaken by employees of the Department designated by the Director-General: Transport.

Clause 116 provides for procedures for the identifying and notifying of differences in respect of the Convention.

Clause 117 provides for the issuance of exemptions from compliance with the provisions of the Act by the Director.

Clause 118 compels compliance with Annex 2 of the Convention in respect of Marshalling Signals, Interception Maneuvers and Orders in terms of the Convention.

Clause 119 provides for the transfer of certain functions and duties in terms of Article 83*bis* of the Convention.

Clause 120 provides for specific offences on board any aircraft in flight, as well as the penalties as imposed in respect of such offences.

Clause 121 provides for the offence where a person interferes with the operation of an air carrier, airport or heliport, as well as the penalty imposed in respect of such offence.

Clause 122 provides for the offence of disorderly or indecent acts on board any aircraft, as well as the penalty imposed in respect of such offence.

Clause 123 provides for the offence regarding smoking on board an aircraft, tampering with smoke detectors and other offences, as well as the penalty imposed in respect of such offences.

Clause 124 provides for the offence relating to illegal practices in connection with cargo, baggage, mail or other goods.

Clause 125 provides for the prohibition and control in aircraft.

Clause 126 provides for the prohibition and control in restricted areas.

Clause 127 provides for the prohibition and control in aviation facilities and air navigation facilities.

Clause 128 provides for the prohibition of conveyance of armaments, drugs or animal products in aircraft as well as the specific powers of authorised persons.

Clause 129 provides for the offence with regards to any threat to security and the Minister's power to designate powers to specified persons to act in accordance with the Act.

Clause 130 provides for penalties in regard to specified offences.

Clause 131 provides for the search, seizure and powers of arrest by authorised persons.

Clause 132 provides for the seizure or retention of harmful articles and the disposal thereof.

Clause 133 provides for the powers of arrest of authorised persons.

Clause 134 provides for the call for identification by authorised persons in the interest of aviation security.

Clause 135 provides for the delegation of powers by the Minister to the Director under specific circumstances.

Clause 136 provides for the application of the Act with regard to acts or omissions taking place outside South Africa.

Clause 137 provides for the jurisdiction with regard to any offence committed outside South Africa.

Clause 138 provides for the extradition of persons with regard to offences committed on board an aircraft in flight in terms of the Extradition Act, 1962.

Clause 139 provides for the admissibility of certain statements in any proceedings before a Court in South Africa in the event of the person making the statement not being found in the Republic.

Clause 140 provides for the powers of the commander on board an aircraft and penalties in connection with any contravention therewith.

Clause 141 provides for the appointment of a National Civil Aviation Security Coordinator by the Minister.

Clause 142 provides for the conflict of interest provisions regarding the National Civil Aviation Security Coordinator.

Clause 143 sets out the responsibilities of the National Civil Aviation Security Coordinator.

Clause 144 provides for determinations by the Minister in appointing executive staff responsible for the execution of security plans at designated airports.

Clause 145 provides for the Minister to make regulations regarding the carrying out of and the giving effect to the provisions of the Act, Convention and the Transit Agreement, and generally any matter which the Minister may consider necessary or expedient to prescribe in order that the objects of the Act or the convention may be achieved.

Clause 146 provides for the issuing of technical standards for civil aviation by way of regulations and the amendment or withdrawal thereof.

Clause 147 provides for transitional provisions upon the coming into force of the Civil Aviation Act, 2008, with regard to the validity of authorisations, certificates, licences, permissions, permits, registrations or levies issued previously.

Clause 148 provides for matters pending in a court of law immediately before the date of commencement of this Act as well as any administrative investigation or board of enquiry so instituted.

Clause 149 provides for the amendment of and repeal of specific laws.

Clause 150 confirms that this Act is binding on the State.

Clause 151 provides for the short title and commencement of this Act.

3. CONSULTATION

The Bill was published in the *Government Gazette* for public comment, and the following specific stakeholders were approached for comments and suggestions. Numerous of these suggestions and comments were taken into consideration in the drafting of the Bill:

1. South African Civil Aviation Authority (SACAA);
2. Airports Company of South Africa (ACSA);
3. Airline Pilots Association (ALPA—SA);
4. Airlines Association of Southern Africa (AASA);
5. Air Traffic Navigation Services (ATNS);
6. Commercial Aviation Association of South Africa (CASA);
7. Airside Operators Association (AOA);
8. South African Weather Services;

9. Chief: Civil Aviation Security.

4. FINANCIAL IMPLICATIONS

Although the Bill makes provision for the establishment of a number of new structures, the majority of these structures currently exist within the aviation framework. Cases in point are the newly established Aviation Safety Investigation Board, an amount which has at least partly been allocated, as well as the Appeal Committees, for which function an amount has also been partly allocated to the Civil Aviation Authority of South Africa.

5. IMPLICATIONS FOR PROVINCES

As civil aviation is a national competence, no implications for provinces are foreseen.

6. IMPLICATIONS FOR MUNICIPALITIES

As civil aviation is a national competence, no implications for municipalities are foreseen.

7. PARLIAMENTARY PROCEDURE

7.1 The State Law Advisers and the Department of Transport are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

7.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.