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REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

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## STAATSKOERANT

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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 786.

7 May 1993

No. 786.

7 Mei 1993

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

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 60 of 1993: International Air Services Act, 1993.

No. 60 van 1993: Wet op Internasionale Lugdienste, 1993.

# ACT

To provide for the establishment of an International Air Services Council; for the regulation and control of international air services; and for matters connected therewith.

*(Afrikaans text signed by the State President.)  
(Assented to 29 April 1993.)*

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

## PRELIMINARY

### Definitions

1. In this Act, unless the context otherwise indicates—
- (i) “airport” means —
    - (a) an airport as defined in section 1 of the Aviation Act, 1962 (Act No. 74 of 1962), which is situated in the Republic and which—
      - (i) is appointed or prescribed in terms of section 6(1)(e) of the Customs and Excise Act, 1964 (Act No. 91 of 1964), by the Commissioner for Customs and Excise as a customs and excise airport; and
      - (ii) is a port of entry referred to in section 1(c) of the Admission of Persons to the Republic Regulation Act, 1972 (Act No. 59 of 1972); or
    - (b) a similar facility in another State or territory; (xi)
  - (ii) “air service” means an air service as defined in section 1 of the Air Services Licensing Act, 1990 (Act No. 115 of 1990); (x)
  - (iii) “air transport service agreement” means an air transport service agreement referred to in section 35; (xii)
  - (iv) “appointed member” means a member of the council appointed by the Minister in terms of section 4(1)(b); (i)
  - (v) “appropriate authority”—
    - (a) (i) means any institution, body or person in a State or territory which, on behalf of that State or territory—
      - (aa) carries out the provisions of the Convention on International Civil Aviation, signed at Chicago on 7 December 1944; and
      - (bb) may authorize a person to operate an international air service to or from an airport in such State or territory; or
    - (ii) if such Convention does not apply to a State or territory, means the institution, body or person in that State or territory which on behalf of the State or territory performs the functions which are performed by an institution, body or person contemplated in subparagraph (i); and
    - (b) means an institution, body or person, excluding the government of a State or territory, which is recognized as such by the Commissioner for Civil Aviation; (xviii)
  - (vi) “Commissioner for Civil Aviation” means the Commissioner as defined in section 1 of the Aviation Act, 1962 (Act No. 74 of 1962); (vii)
  - (vii) “council” means the International Air Services Council established under section 3(1); (xvi)
  - (viii) “foreign licence” means any document—
    - (a) issued by an appropriate authority in another State or territory which serves a similar purpose as a licence issued in terms of this Act; and

- (b) which is recognized as such by the Commissioner for Civil Aviation;  
(iii)
- (ix) "international air service" means an air service which passes through the air space over the territory of the Republic and at least one other country: Provided that an air service which passes through the air space over the territory of another country without operating an air service in the territory of that other country, and the route or journey of which started and ended within the territory of the Republic, shall not be an international air service; (v) 5
- (x) "licence" means an international air service licence referred to in section 13(1) or 46(1); (viii) 10
- (xi) "licensee" means the person to whom a licence has been issued in terms of section 17(2) or (4) or to whom a licence is deemed in terms of section 46(1) to have been issued; (ix)
- (xii) "Minister" means the Minister of Transport; (xiii) 15
- (xiii) "operating certificate" means an operating certificate issued in terms of section 31(2) or deemed in terms of section 46(1) to have been so issued; (ii)
- (xiv) "permit" means a foreign operator's permit referred to in section 13(3); (xiv) 20
- (xv) "permit holder" means the person to whom a permit has been issued in terms of section 25(2); (xv)
- (xvi) "prescribed" means prescribed by regulation; (xix)
- (xvii) "resident of the Republic" means a resident of the Republic as defined in section 1 of the Air Services Licensing Act, 1990 (Act No. 115 of 1990); (vi) 25
- (xviii) "route", with regard to a route between the Republic and another State or territory, means all air connections and combinations of air connections between airports in the Republic and airports in that other State or territory; (xvii) 30
- (xix) "this Act" includes the regulations. (iv)

#### Application of Act

2. This Act shall apply only to the operation of an international air service.

### CHAPTER I

#### THE INTERNATIONAL AIR SERVICES COUNCIL

##### Establishment of International Air Services Council

3. (1) There is hereby established a council to be called the International Air Services Council, which shall be a juristic person.
- (2) The council shall make known its office and postal address by notice in the *Gazette*. 40
- (3) The council shall perform the functions conferred upon it in terms of this Act in a manner which in its opinion is calculated—
- (a) to promote trade with, and tourism to and from, the Republic;
- (b) to promote competition between persons who operate international air services; 45
- (c) not to unjustifiably prefer any licensee over another;
- (d) to promote a high standard of safety in the operation of international air services;
- (e) to promote the development and interests of the local international air services industry; 50
- (f) to promote the interests and needs of users or potential users of air services in the Republic.

##### Constitution of council

4. (1) The members of the council shall consist of—
- (a) the Commissioner for Civil Aviation as chairman; and 55

- (b) not more than four other persons, appointed by the Minister after consultation with associations which in the opinion of the Minister—
- (i) represent the consumers of international air services in the Republic;
  - (ii) represent organized commerce and industry; 5
  - (iii) are involved in the transportation of passengers or cargo in the air;
  - (iv) have special knowledge of or experience in transportation; and
  - (v) represent the organized tourism industry.
- (2) The Minister shall designate one of the appointed members as vice-chairman. 10
- (3) The persons appointed by the Minister in terms of subsection (1)(b) shall be persons who, in the opinion of the Minister, on account of their training or experience have special knowledge with regard to aviation, or who are well versed in law, finance, engineering, economics, transport economics or tourism.
- (4) If the chairman is unable to perform his duties in terms of this Act, the vice-chairman shall act as chairman of the council, and while the vice-chairman is thus acting, he shall exercise all the powers and perform all the duties of the chairman. 15

#### Term of office

5. An appointed member shall hold his office for a period not exceeding three years: Provided that such member may be reappointed at the expiry of his term of office. 20

#### Disqualification for membership of council

6. (1) No person shall be appointed as an appointed member if he—
- (a) is not a resident of the Republic; 25
  - (b) is an unrehabilitated insolvent;
  - (c) has at any time been convicted of an offence for which he has been sentenced to imprisonment without the option of a fine for a period of not less than twelve months, unless he has received a grant of amnesty or a free pardon, or unless the period of such imprisonment expired at least five years prior to the date of his appointment; 30
  - (d) is an officer or employee as defined in section 1 of the Public Service Act, 1984 (Act No. 111 of 1984); or
  - (e) is of unsound mind and has been so declared by a competent court.
- (2) An appointed member shall vacate his office if he— 35
- (a) becomes subject to any disqualification mentioned in subsection (1);
  - (b) tenders his resignation in writing as a member to the Minister;
  - (c) has been absent without the leave of the council from three consecutive meetings of the council; or
  - (d) is relieved of his office under subsection (3). 40
- (3) An appointed member may at any time be relieved of his office by the Minister if such member—
- (a) has, in the opinion of the Minister, been guilty of improper conduct; or
  - (b) is, in the opinion of the Minister, unable to perform his duties efficiently as such member. 45
- (4) If an appointed member dies or vacates his office before the expiration of the period for which he was appointed, the Minister may, subject to the provisions of section 4, appoint another person to fill the vacancy for the unexpired portion of the period for which such member was appointed.

#### Remuneration of appointed members 50

7. An appointed member shall receive, from moneys appropriated by Parliament for this purpose, such remuneration and allowances as may be determined by the Minister, with the concurrence of the Minister of State Expenditure, in general or in any particular case.

**Meetings of council**

8. (1) The council shall hold meetings at such times and places as may from time to time be determined by the chairman.
- (2) (a) The chairman or, in his absence, the vice-chairman shall preside at every meeting of the council if he is present. 5
- (b) If both the chairman and the vice-chairman are absent from a meeting of the council, the members present shall from among their number elect a person to preside at that meeting.
- (3) The quorum for a meeting of the council shall be a majority of all its members. 10
- (4) If a member of the council in his personal capacity, or his spouse or child, has any direct or indirect financial interest in any matter to be dealt with at any meeting of the council, such member shall—
- (a) immediately after the interest has come to his attention, disclose such interest to the chairman; 15
- (b) not attend that meeting as a member during the consideration of such matter;
- (c) not in any manner take part as a member in the consideration of such matter by the council; or
- (d) not in any manner endeavour to influence the opinion or vote of any other member of the council in connection with such matter. 20
- (5) The decision of the majority of the members of the council present at a meeting thereof shall constitute the decision of the council, and in the event of an equality of votes the member presiding at the meeting concerned shall have a casting vote in addition to his deliberative vote. 25
- (6) No decision taken by the council or act performed under authority of the council shall be invalid merely by reason of an interim vacancy on the council, or because a person who was not entitled to sit as a member or attend such meeting sat as such member or attended such meeting at the time when the decision was taken or the act was authorized, if the decision was taken or the act was authorized by the requisite majority of the members who were present at the time and who were entitled to sit as members of the council or attend the meeting. 30
- (7) The procedures to be followed at meetings of the council shall be determined by the chairman.
- (8) The council shall cause minutes to be kept of every meeting thereof. 35
- (9) The minutes referred to in subsection (8), shall be kept at the offices of the council.

**Meetings regarding certain applications**

9. (1) The council shall hold a meeting referred to in section 17(3) in public at such times and places as may from time to time be determined by the chairman. 40
- (2) The provisions of section 8(2), (3), (4), (5), (6) and (7) shall *mutatis mutandis* apply in respect of a meeting referred to in subsection (1).
- (3) The member of the council presiding at a meeting referred to in subsection (1), shall keep minutes of the proceedings at such meeting or cause them to be kept. 45
- (4) The minutes referred to in subsection (3), shall be kept at the offices of the council.
- (5) Copies of the minutes referred to in subsection (3), or any part thereof, may be obtained against payment of the prescribed fee.

**Administration** 50

10. All administrative work, including the payment and receipt of money as well as secretarial work, in connection with the performance of the functions or the exercise of the powers of the council, shall be carried out by officers and employees in the Department of Transport designated for such purpose by the Director-General: Transport. 55

**Annual report**

11. (1) The council shall as soon as practicable after 31 March of each year but not later than 30 June of that year submit to the Minister a report (hereinafter referred to as the annual report) giving particulars regarding the activities of the council during the year which ended on the first-mentioned date. 5

(2) The Minister shall lay a copy of the annual report upon the Table in Parliament within 30 days after it has been received by him if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within 30 days after the commencement of its next ensuing ordinary session.

**Powers of council to compel attendance of witnesses and production of documents, etc.** 10

12. (1) The council may, for the purposes of any proceedings before it under this Act, by summons under the hand of the chairman, direct any person who, in the opinion of the council, may be able to give material information concerning the subject matter of the proceedings, or to produce any book, document or thing which has any bearing on the subject matter of the proceedings, to appear personally before the council, at a time and place stated in the summons, and to produce any such book, document or thing which may be in his possession or custody or under his control. 15

(2) A summons referred to in subsection (1) shall be in the prescribed form and shall be served in the same manner as a subpoena in criminal proceedings in the magistrate's court. 20

(3) The council may interrogate any person summoned to appear in terms of subsection (1) and direct him to produce any book, document or thing mentioned in the summons, and for this purpose the member presiding at the meeting concerned may administer an oath to him or require him to make an affirmation of the truth of his testimony. 25

(4) Any book, document or thing produced by any person in terms of subsection (3) may be retained for a reasonable period for examination by the council or any person directed thereto by the council. 30

**CHAPTER II****INTERNATIONAL AIR SERVICES****Operating of international air service**

13. (1) Subject to the provisions of this Act, no person shall use an aircraft to operate an international air service, except under and in accordance with the terms and subject to the conditions of an international air service licence issued to that person in terms of this Act or deemed to have been so issued. 35

(2) Subject to the provisions of subsection (3), a licence referred to in subsection (1) shall not be required if an aircraft visiting the Republic from time to time and registered in another State is used to operate an international air service, provided that such air service is operated under and in accordance with the provisions and subject to the conditions of— 40

(a) the International Air Services Transit Agreement, signed at Chicago on 7 December 1944;

(b) an air transport service agreement; or 45

(c) a foreign licence.

(3) Subject to the provisions of this Act, no person shall use an aircraft in respect of which the provisions of subsection (2)(b) or (c) are applicable, to operate an international air service except under and in accordance with the provisions and

subject to the conditions of a foreign operator's permit issued to such person in terms of this Act.

(4) The Minister may, subject to the conditions he may determine, by notice in the *Gazette* exempt a licensee as defined in section 1 of the Air Services Licensing Act, 1990 (Act No. 115 of 1990), from the provisions of subsection (1), in respect of a class and type of air service and a category of aircraft mentioned in the notice concerned. 5

(5) The class and type of air service and the category of aircraft referred to in subsection (4), shall be a class and type of air service and a category of aircraft which is prescribed in terms of section 13 of the Air Services Licensing Act, 1990. 10

(6) The Minister may by notice in the *Gazette* exempt the holders of foreign licences issued by the appropriate authority of a State or territory mentioned in that notice, from the provisions of subsection (3), subject to the conditions, and in respect of the prescribed class and type of air service, and category of aircraft, determined by the Minister and mentioned in the notice. 15

#### Information to be specified on licence or permit

14. (1) On a licence or a permit shall be specified—
- (a) the class and type of international air service in respect of which such licence or permit has been issued;
  - (b) the category of aircraft and, if applicable, the kind of aircraft that shall be used to operate the international air service concerned; 20
  - (c) the airport from and the airport to which flights are undertaken by the person operating the international air service concerned;
  - (d) the frequency with which flights shall be undertaken by the person operating the international air service; and 25
  - (e) any condition which is attached by the council or the Commissioner for Civil Aviation to such licence or permit, as the case may be, in terms of this Act.
- (2) The classes and the types of international air services as well as the categories of aircraft shall be as prescribed. 30

#### Application for licence or amendment thereof

15. (1) An application for a licence shall be made to the council on the prescribed form.
- (2) If a licensee desires to amend—
- (a) the type of international air service; 35
  - (b) the category or kind of aircraft;
  - (c) an airport;
  - (d) the frequency of flights; or
  - (e) any condition,
- specified on his licence, he shall apply to the council on the prescribed form for such amendment. 40
- (3) An application referred to in subsection (1) or (2) shall contain all the particulars and information prescribed in respect of such application and shall be accompanied by the prescribed documents.

#### Processing of application for licence 45

16. (1) Subject to the provisions of section 17(2), the council shall, within 21 days after the receipt of an application referred to in section 15(1) or (2), make known by notice in the *Gazette* the prescribed particulars in respect of the application concerned.
- (2) Any person may, after the publication of the notice referred to in subsection (1), obtain a copy of such application from the council: Provided that particulars pertaining to the financing of a proposed international air service shall not be disclosed without the consent of the applicant. 50
- (3) Any person may in writing address representations to the council against or

in favour of such application within 28 days after the publication of the notice referred to in subsection (1), or such longer period as the council may allow on good cause shown.

(4) The council shall, within 14 days after the receipt of representations referred to in subsection (3), forward a copy of such representations to the applicant. 5

(5) Within 14 days after the council has forwarded a copy of the representations referred to in subsection (3) to the applicant, or such longer period as the council may allow on good cause shown, the applicant may furnish the council with information pertaining to such representations.

#### Adjudication of application for licence 10

17. (1) As soon as practicable, but within 120 days after the receipt of an application in terms of section 15(1) or (2), the council shall consider such application together with all representations, information, evidence and other documents relating to such application and at the disposal of the council.

(2) The council may, notwithstanding the provisions of subsection (1), consider 15 an application and issue a licence immediately after the receipt of an application for a temporary licence referred to in section 18(2) if the council—

- (a) is of the opinion that compliance with the procedures referred to in section 16 would defeat the object of such application;
- (b) is satisfied that the applicant conforms to the requirements specified in subsection (4); and 20
- (c) is satisfied that the reason for making the application is to operate an international air service which is only of a temporary nature;

Provided that the council may apply such procedures referred to in section 16 as it may deem necessary in order to enable it to reach a decision. 25

(3) (a) In order to assist the council in considering an application referred to in subsection (1), the council may order that the applicant and any person referred to in section 16(3) appear before the council, at a meeting of the council to be held at the time and place determined by the chairman, in order to hear arguments against or in favour of such application. 30

(b) Such a meeting shall only be held after at least 21 days' notice thereof to the parties referred to in paragraph (a).

(c) The parties referred to in paragraph (a) may appear in person at a meeting referred to in that paragraph or may at their own expense be represented by counsel, an attorney or other duly authorized representative. 35

(d) If the council has directed any person under section 12 to give evidence at a meeting referred to in paragraph (a), that witness may also be interrogated by any party referred to in paragraph (a) or by the counsel, attorney or representative of such party, as the case may be.

(4) The council may, subject to the provisions of this Act, in its discretion grant 40 an application referred to in subsection (1) and issue or amend a licence if the council is satisfied—

- (a) that the applicant is fit and able to operate the international air service; and
- (b) that the international air service concerned can be operated within the 45 structure of the existing international air service system in the Republic.

(5) For the purposes of subsection (4)(a), an applicant is fit if such applicant satisfies the council—

- (a) that, subject to the provisions of subsection (9), he— 50
  - (i) if he is a natural person, is a resident of the Republic; or
  - (ii) if he is not a natural person, is incorporated in the Republic and that the voting rights in respect of such person are substantially held by residents of the Republic;

(b) that the person referred to in paragraph (a) will be actively and effectively in control of the international air service; 55

(c) that, subject to the provisions of subsection (10), the aircraft which will be used in operating the international air service is a South African aircraft as defined in section 1 of the Aviation Act, 1962 (Act No. 74 of 1962).

(6) For the purposes of subsection (4)(a) the council shall take into account— 60



- (a) the ability of the applicant to operate a safe and reliable international air service;
  - (b) the financial estimates of the applicant with regard to the international air service concerned, including the tariff structure;
  - (c) the kind of aircraft and the number of aircraft which will be used to operate the international air service concerned; 5
  - (d) the experience of the applicant with regard to the operation of an air service, whether international or not;
  - (e) the financial capability of the applicant; and
  - (f) any other relevant requirement, 10
- in order to establish whether the applicant is able to operate the international air service concerned.

(7) For the purposes of subsection (4)(b) the council shall, subject to the provisions of section 3(3), also take into account—

- (a) the economic and other national interests of the Republic; 15
- (b) the effect which the granting of the application may have on the existing licensees;
- (c) the benefits which may flow from operating more than one international air service over the same route or in the same region or territory;
- (d) the provisions of an air transport service agreement which applies to the route on which the international air service concerned is or will be operated; 20
- (e) any negotiations which have already taken place with a view to the conclusion of an air transport service agreement.

(8) The Minister may, for the purposes of subsections (6) and (7), prescribe 25 directives which the council shall follow in the application of those subsections.

(9) The council shall exempt an applicant, on the conditions determined by the Minister, from the provisions of subsection (5)(a) if the Minister, after considering an application on the prescribed form, has directed the council to exempt such applicant. 30

(10) The council may, in its discretion, exempt an applicant from the provisions of subsection (5)(c) if the council is satisfied that such applicant complies with the prescribed requirements in respect of such aircraft and issue the licence concerned subject to the conditions the council deems fit regarding the operation and maintenance of that aircraft. 35

(11) The parties referred to in subsection (3)(a) may request the council to furnish reasons for the approval or refusal of the application for a licence.

(12) The council shall publish the prescribed particulars in respect of each licence issued or amended in terms of subsection (4) by notice in the *Gazette*.

(13) As soon as the council has issued or amended a licence in terms of subsection (4) and the provisions of an air transport service agreement apply to such licence, or in such other cases as may be prescribed, the council shall notify the Minister thereof, and such notice shall contain the prescribed particulars. 40

#### Form and period of validity of licence

18. (1) The council shall issue a licence on the prescribed form. 45
- (2) A licence thus issued shall be valid for an indefinite period: Provided that a temporary licence shall be valid—
- (a) for the period determined by the council but not for a period exceeding 30 days; or
  - (b) for not more than two return flights. 50

#### Register of licences

19. (1) The council shall keep a register of licences issued in terms of this Act.
- (2) The register concerned shall be kept in the prescribed manner and shall contain the prescribed particulars.
- (3) Information from such register shall be furnished by the council to any person who, in the opinion of the council, on reasonable grounds requires such information. 55

**Conditions of licence**

20. (1) A licence is issued on condition that—
- (a) the licensee shall at all times during the operation of the international air service comply with the requirements specified in section 17(4);
  - (b) the licensee shall not commence or, subject to the provisions of section 32(2), continue with an international air service, unless he is in possession of a valid operating certificate; 5
  - (c) the licensee is insured as prescribed in relation to the class and type of international air service, and the category of aircraft mentioned on his licence, and in respect of the prescribed nature, class or kind of insurance; 10
  - (d) the licensee shall within the period determined by the council, which period shall not exceed 12 months from the date of the issuing or amendment of the licence, commence, or continue as amended, with the air service concerned, and the operation of that air service shall not be interrupted for a period exceeding 3 months or for such longer period as may be determined by the council; 15
  - (e) the licence shall lapse as soon as the estate of the licensee is sequestrated or wound up, as the case may be; and
  - (f) the licence shall lapse if the fees referred to in section 43(1)(e) are not paid within the prescribed period. 20
- (2) The council may, subject to the provisions of subsection (1), issue a licence subject to any—
- (a) condition with regard to the matters referred to in section 17(5), (6) and (7); 25
  - (b) other condition which the council may deem necessary in the interest of public safety.

**Failure of licensee**

21. (1) (a) The council shall, if it receives a complaint or on reasonable grounds suspects that a licensee has failed to comply with the provisions of this Act, or a provision or condition of his licence, hold a meeting as contemplated in section 17(3) in order to conduct a proper investigation into such failure. 30
- (b) A complaint referred to in paragraph (a) shall be lodged in the prescribed manner with the council.
- (2) The council may, if it is satisfied after such investigation that a licensee has failed to comply with a provision of this Act or with a provision or condition of his licence— 35
- (a) direct such licensee to comply with such provision or condition within the period determined by the council;
  - (b) suspend or amend the licence concerned, on the conditions determined by the council, for a period not exceeding two years; or 40
  - (c) cancel or amend the licence concerned.
- (3) If the council has suspended or amended a licence in terms of subsection (2)(b) or has cancelled or amended it in terms of subsection (2)(c), the council shall notify the licensee in writing of its decision, stating the grounds for such decision. 45
- (4) Section 17(3) shall apply *mutatis mutandis* to a meeting referred to in subsection (1): Provided that the parties who shall attend such meeting shall be the licensee and, if applicable, also the person who lodged a complaint in terms of subsection (1) with the council.

**Duties of licensee** 50

22. (1) The licensee shall—
- (a) notify the Commissioner for Civil Aviation, in the prescribed manner, before any change is effected to the particulars on his operating certificate;

- (b) furnish the council within the prescribed period with the prescribed statistical information;
- (c) keep his licence and operating certificate in a safe place; and
- (d) notify the council in the prescribed manner—
- (i) of any change regarding the particulars referred to in section 15(3) or the requirements referred to in section 17(5); or
- (ii) of any curtailment, abandonment or extension of the international air service concerned or any part thereof, at least 14 days before such change, curtailment, abandonment or extension is effected.
- (2) The council shall not disclose the statistical information referred to in subsection (1)(b) in such a manner that the activities of the licensee are identified thereby unless the written permission of the licensee has been obtained.

#### Application for permit or amendment thereof

23. (1) An application for a permit shall be made to the Commissioner for Civil Aviation on the prescribed form.
- (2) If a permit holder desires to amend—
- (a) the type of international air service;
- (b) the category or kind of aircraft;
- (c) the airport;
- (d) the frequency of flights; or
- (e) any condition, specified on his permit, he shall apply to the Commissioner for Civil Aviation on the prescribed form for such amendment.
- (3) An application referred to in subsection (1) or (2) shall contain all the particulars and information prescribed in respect of such application and shall be accompanied by the prescribed documents.

#### Processing of application for permit

24. (1) The Commissioner for Civil Aviation—
- (a) shall, within 14 days after the receipt of an application referred to in section 23(1) or (2), make known by notice in the *Gazette* the prescribed particulars in respect of the application concerned, if he is of the opinion that that application does not comply with the prescribed requirements referred to in section 25(2)(d); or
- (b) may, within 14 days after the receipt of an application referred to in section 23(1) or (2), make known by notice in the *Gazette* the prescribed particulars in respect of the application concerned, if he is of the opinion that that application does comply with the prescribed requirements referred to in section 25(2)(d).
- (2) Any person may, after the publication of the notice referred to in subsection (1), obtain a copy of such application from the Commissioner for Civil Aviation: Provided that particulars pertaining to the financing of a proposed air service shall not be disclosed without the consent of the applicant.
- (3) Any person may in writing address representations to the Commissioner for Civil Aviation against or in favour of such application within 28 days after the publication of the notice referred to in subsection (1), or such longer period as the Commissioner for Civil Aviation may allow on good cause shown.
- (4) The Commissioner for Civil Aviation shall, within 14 days after the receipt of the representations referred to in subsection (3), forward a copy of such representations to the applicant.
- (5) Within 14 days after the Commissioner for Civil Aviation has forwarded a copy of the representations referred to in subsection (3) to the applicant, or such longer period as the Commissioner for Civil Aviation may allow on good cause shown, the applicant may furnish the Commissioner for Civil Aviation with information pertaining to such representations.

**Adjudication of application for permit**

25. (1) Subject to the provisions of section 24, the Commissioner for Civil Aviation shall as soon as practicable consider an application referred to in section 23(1) or (2) together with all representations, information, evidence and other documents relating to such application and at the disposal of the Commissioner for Civil Aviation. 5

(2) An application is granted and a permit issued or amended, subject to the provisions of this Act, if the applicant satisfies the Commissioner for Civil Aviation—

- (a) that the international air service concerned will be operated in such a manner that it will in all material respects comply with the applicable international conventions which have been implemented in the Republic by law; 10
- (b) that he is fit and able to operate the international air service, and the Commissioner for Civil Aviation may require the applicant to submit any of the prescribed documents in support thereof; 15
- (c) that he is in possession of a valid foreign licence which pertains to the international air service for which application is being made for a permit, or the amendment of a permit, and which has been granted to him by the appropriate authority in any state or territory from which such international air service will be operated or that such international air service will be operated by virtue of an air transport service agreement; 20
- (d) that, subject to the provisions of paragraph (e), the international air service complies with the prescribed requirements; and
- (e) that, if the international air service does not comply with such prescribed requirements, a need exists for such an international air service on account of the number of passengers, or the quantity of cargo or mail, as the case may be, which is transported or is expected to be transported between the Republic and the State or territory from or to which such international air service will be operated: Provided that the passengers, cargo or mail with an origin in or a destination to any other State or territory than that referred to in this paragraph, shall not be taken into consideration by the Commissioner for Civil Aviation. 25

(3) In exercising his discretion the Commissioner for Civil Aviation shall also consider the effect which that permit may have on existing licensees, should it be granted or amended, and if— 35

- (a) an existing licensee operates an international air service over the same route as that for which application is made to the Commissioner for Civil Aviation in terms of section 23(1) or (2); or
- (b) two or more applications are received in terms of section 23(1) or (2) to provide an international air service over the same route, 40

the Commissioner for Civil Aviation shall duly consider the benefits, if any, which may arise from the provision of two or more international air services over the same route.

(4) Subject to the provisions of subsections (2) and (3), the Commissioner for Civil Aviation shall, in considering an application in terms of section 23(1) or (2), if applicable, also consider the provisions of an air transport service agreement. 45

(5) The Commissioner for Civil Aviation shall publish the prescribed particulars in respect of each permit issued or amended in terms of subsection (2) by notice in the *Gazette* if the particulars of the application for a permit have been published in terms of section 24(1). 50

**Form and period of validity of permit**

26. (1) The Commissioner for Civil Aviation shall issue a permit on the prescribed form.

(2) A permit thus issued shall be valid— 55

- (a) for the period determined by the Commissioner for Civil Aviation;
- (b) for the number of flights determined by the Commissioner for Civil Aviation; or

- (c) for the number of flights determined by the Commissioner for Civil Aviation which have to be undertaken within the period determined by the Commissioner for Civil Aviation:

Provided that such period and number of flights shall—

- (i) be subject to the provisions of an air transport service agreement if such an agreement applies to the permit concerned; and 5  
 (ii) not exceed the period and number of flights prescribed in relation to the class and type of international air service.

#### Register of permits

27. (1) The Commissioner for Civil Aviation shall keep a register of permits issued in terms of this Act. 10

(2) The register concerned shall be kept in the prescribed manner and shall contain the prescribed particulars.

(3) Information from such register shall be furnished by the Commissioner for Civil Aviation to any person who, in the opinion of the Commissioner for Civil Aviation, on reasonable grounds requires such information. 15

#### Conditions of permit

28. (1) A permit is issued on condition that—

- (a) the permit holder shall at all times during the operation of the international air service comply with the requirements specified in section 25(2); 20  
 (b) the permit shall lapse if the fees referred to in section 43(1)(e) are not paid within the prescribed period; and  
 (c) the permit shall lapse as soon as the estate of the permit holder is sequestrated or wound up, as the case may be. 25

(2) The Commissioner for Civil Aviation may, subject to the provisions of subsection (1), issue a permit subject to any other condition which the Commissioner for Civil Aviation deems necessary in the interest of public safety.

#### Cancellation of permit

29. (1) The Commissioner for Civil Aviation may, if he on reasonable grounds suspects that a permit holder has failed to comply with a provision of this Act or with a provision or condition of his permit, cancel the permit concerned. 30

(2) No permit shall be cancelled in terms of subsection (1) unless—

- (a) the Commissioner for Civil Aviation has notified the permit holder in writing of his suspicions referred to in subsection (1), stating the grounds for such suspicions; and 35  
 (b) the Commissioner for Civil Aviation has given the permit holder the opportunity to address representations to him in writing, within the period determined by him, regarding those suspicions.

#### Application for operating certificate

30. (1) A licensee shall apply to the Commissioner for Civil Aviation on the prescribed form for the issuing of an operating certificate. 40

(2) An application in terms of subsection (1) shall be accompanied by the prescribed particulars and documents.

#### Adjudication of application for operating certificate

31. (1) In considering an application referred to in section 30(1) the Commissioner for Civil Aviation may conduct the investigation he deems necessary. 45

(2) The Commissioner for Civil Aviation shall issue an operating certificate to a licensee on the prescribed form if that licensee satisfies the Commissioner for Civil Aviation that— 50

- (a) he will comply with the provisions of sections 20 and 22; and  
 (b) he will not operate the international air service concerned contrary to

any provision of this Act, the Aviation Act, 1962 (Act No. 74 of 1962), or the Civil Aviation Offences Act, 1972 (Act No. 10 of 1972).

(3) If the Commissioner for Civil Aviation is not so satisfied he shall notify the licensee thereof, stating his grounds in the notification, and grant the licensee the opportunity to rectify or supplement any defect within the period determined by the Commissioner for Civil Aviation, after which period the Commissioner for Civil Aviation shall grant or refuse the application concerned.

#### Period of validity of operating certificate

32. (1) An operating certificate shall be valid for such period as may be determined by the Commissioner for Civil Aviation: Provided that such period shall not exceed a period of 12 months from the date of issuing thereof.

(2) If the holder of an operating certificate applies, at least 30 days prior to the expiry thereof, for a new operating certificate, that first-mentioned operating certificate shall, notwithstanding the provisions of subsection (1), remain in force until such holder is notified by the Commissioner for Civil Aviation of the result of his application for a new operating certificate.

#### Suspension of operating certificate

33. (1) If the Commissioner for Civil Aviation is of the opinion that—

(a) the holder of an operating certificate is operating the international air service concerned contrary to the provisions of the laws mentioned in section 31(2)(b); or

(b) the particulars and documents furnished in terms of section 30 are defective or misleading,

the Commissioner for Civil Aviation may suspend that operating certificate: Provided that the Commissioner for Civil Aviation shall only suspend such operating certificate after he has given the holder thereof the opportunity to make representations in writing and to show cause, within the period determined by the Commissioner for Civil Aviation, why that operating certificate should not be suspended.

(2) Upon the expiry of the period referred to in subsection (1), which period shall not be less than 21 days, the Commissioner for Civil Aviation may suspend the operating certificate concerned for such period and on such conditions as he may determine.

(3) The Commissioner for Civil Aviation shall notify the council of a suspension referred to in subsection (2).

#### Register of operating certificates

34. (1) The Commissioner for Civil Aviation shall keep a register of operating certificates issued in terms of this Act.

(2) The register concerned shall be kept in the prescribed manner and shall contain the prescribed particulars.

(3) Information from such register shall be furnished by the Commissioner for Civil Aviation to any person who, in the opinion of the Commissioner for Civil Aviation, on reasonable grounds requires such information.

### CHAPTER III

#### GENERAL

#### Air transport service agreements

35. (1) The Minister may, with the approval of the State President and subject to the provisions of this Act, enter into any air transport service agreement with the government or other appropriate authority of another State or territory regarding the control over and regulation of any class or type of international air service operated or to be operated between the Republic and that State or territory.

- (2) An agreement contemplated in subsection (1) may include arrangements with regard to—
- (a) the designation by the Republic and that other State or territory of one or more persons who operate an international air service to operate such an air service over a route mentioned in the agreement between the Republic and that other State or territory; 5
  - (b) the control over the capacity and frequency of international air services;
  - (c) the reciprocal exchange of rights to load or discharge passengers, cargo or mail, as the case may be;
  - (d) the filing and, if applicable, the approval of tariffs; 10
  - (e) anti-competitive or predatory practices by the persons who operate international air services;
  - (f) the entering into commercial agreements by the persons who operate international air services;
  - (g) the reciprocal equal treatment of the persons who operate international air services; 15
  - (h) the reciprocal recognition of the laws relating to immigration, quarantine, customs and clearance; and
  - (i) in general, to achieve the objectives mentioned in section 3(3).

#### Functions of Commissioner for Civil Aviation 20

36. The provisions of section 3(3) shall apply *mutatis mutandis* to the Commissioner for Civil Aviation when he performs the functions conferred upon him in terms of this Act.

#### Appeal

37. (1) Any person who feels aggrieved— 25
- (a) by the refusal of the council or the Commissioner for Civil Aviation to issue to him a licence, a permit or an operating certificate, as the case may be;
  - (b) by a decision of the council in terms of section 21(2)(b) or (c); or
  - (c) by a decision of the Commissioner for Civil Aviation in terms of section 29(1) or 33(2), 30
- may in the prescribed manner appeal against such refusal or decision to the provincial or local division of the Supreme Court of South Africa having jurisdiction in the area within which such person is resident, within 30 days after he became aware of such refusal or decision, or within such further period, not exceeding two months, as the said court may allow on good cause shown. 35
- (2) The court referred to in subsection (1) may—
- (a) confirm, vary or set aside the refusal or decision of the council or Commissioner for Civil Aviation, as the case may be;
  - (b) give such other decision as the council or the Commissioner for Civil Aviation, as the case may be, was able to give; or 40
  - (c) remit the case to the council or the Commissioner for Civil Aviation, as the case may be, with such instructions as that court may deem fit.
- (3) The court concerned may issue any order regarding costs which the court under the circumstances deems fair. 45
- (4) A decision given in terms of subsection (2) shall, for the purposes of this Act, be deemed to be a decision of the council or the Commissioner for Civil Aviation, as the case may be.

#### Secrecy

38. Any person who is or was concerned in the performance of any function in terms of this Act, shall not disclose any information which he obtained in the performance of such a function except— 50
- (a) to any person who of necessity requires it for the performance of his functions in terms of this Act;

- (b) if he is a person who of necessity supplies it in the performance of his functions in terms of this Act;
- (c) such information which is required in terms of any law or as evidence in any court of law; or
- (d) to any competent authority which requires it for the institution, or an investigation with a view to the institution, of any criminal prosecution. 5

#### Limitation of liability

39. No person, including the State, shall be liable in respect of anything done or omitted in good faith in the exercise of a power or the performance of a duty under or by virtue of this Act, or in respect of anything that may result therefrom. 10

#### Offences and penalties

40. (1) Any person who—

- (a) fails to comply with a direction referred to in section 12(1) or (3), or fails to remain in attendance after appearing in terms of section 12(1), or refuses to be sworn or to affirm as a witness or to be interrogated by the council in terms of section 12(3), or any person in terms of section 17(3)(d), or to answer questions during such interrogation; 15
- (b) contravenes or fails to comply with section 13 or a term or condition referred to in section 13 or a condition referred to in section 20 or 28;
- (c) refuses or fails to fulfil the duties referred to in section 22; 20
- (d) falsifies, counterfeits, alters, defaces or mutilates, or adds anything to, a licence, permit, operating certificate or other document issued under this Act, or is in possession of a licence, permit, operating certificate or other document which has been thus falsified, counterfeited, altered, defaced or mutilated, or to which an addition has been made; 25
- (e) uses, or permits to be used, a licence, permit, operating certificate or other document issued under this Act of which he is not the holder;
- (f) for the purposes of any application or representations in terms of this Act or during interrogation in terms of section 12(3) or 17(3)(d), furnishes information or particulars which to his knowledge are false or misleading in any material respect, 30

shall be guilty of an offence.

(2) Any person who is convicted of an offence in terms of subsection (1) shall—

- (a) in the case of an offence referred to in subsection (1)(a) or (c), be liable to a fine, or to imprisonment for a period not exceeding one year; or 35
- (b) in the case of an offence referred to in subsection (1)(b), (d), (e) or (f), be liable to a fine, or to imprisonment for a period not exceeding five years.

#### Presumptions and evidence

41. In criminal proceedings under this Act— 40

- (a) it shall be presumed, unless the contrary is proved, that an aircraft which is being used in operating an air service, is so used by the person in whose name that aircraft is registered, whether in terms of a provision in force in the Republic or elsewhere, or that such person caused it to be so used;
- (b) it shall be presumed, unless the contrary is proved, that an aircraft which is registered in the name of a licensee or permit holder and which is being used in operating an air service contrary to the terms and conditions of such licence or permit, as the case may be, is so used by that licensee or permit holder or that such licensee or permit holder caused it to be so used; 45
- (c) it shall be presumed, unless the contrary is proved, that the conveyance in an aircraft of any person, in addition to the normal operating crew, or of any goods is conveyance for reward; 50



- (d) a certificate issued by the chairman of the council or the Commissioner for Civil Aviation stating that a licence or permit or operating certificate, as the case may be, has not been granted or issued to a specified person shall, upon the mere production thereof, be accepted as *prima facie* proof of the facts mentioned therein; 5
- (e) a copy of a licence or permit shall, upon the mere production thereof, be accepted as *prima facie* proof of the fact that the person whose name appears as licensee or permit holder, as the case may be, on that copy, was the licensee or permit holder in respect of the air service concerned at the time when the offence was committed; 10
- (f) a certified extract from or a copy of any register kept in terms of this Act shall, upon the mere production thereof, be accepted as *prima facie* proof of the facts mentioned therein; and
- (g) it shall be presumed, unless the contrary is proved, that a falsified, counterfeited, altered, defaced or mutilated licence, permit, operating certificate or other document issued under this Act, has been so falsified, counterfeited, altered, defaced or mutilated by the person in whose possession it has been found or that that person, in the case of an addition, has made the addition. 15

### Delegation 20

42. (1) The Commissioner for Civil Aviation may, subject to such conditions as he may deem necessary—
- (a) delegate to an officer employed by the department any power conferred upon him in terms of this Act; or
- (b) authorize an officer employed by the department to perform any duty assigned to him in terms of this Act. 25
- (2) The provisions of subsection (1) shall not apply to an application in terms of section 23(1) or (2).
- (3) Any person to whom any power has been so delegated or who has been authorized to perform any duty shall exercise that power or perform that duty subject to the directions of the Commissioner for Civil Aviation, and the Commissioner for Civil Aviation may at any time revoke such delegation or authorization. 30
- (4) Any delegation or authorization under subsection (1) shall not prevent the Commissioner for Civil Aviation from exercising that power or performing that duty himself. 35

### Regulations

43. (1) The Minister may, after consultation with the council, make regulations regarding—
- (a) the payment of fees in respect of any application made in terms of this Act; 40
- (b) the payment of fees in respect of the reasons for the approval or refusal of an application for a licence;
- (c) the payment of fees in respect of the issuance of a licence or permit, or the amendment thereof, including the period within which such fees shall be paid; 45
- (d) the payment of fees in respect of the issuance of an operating certificate, including the period within which such fees shall be paid;
- (e) the payment of annual fees in respect of a licence or a permit;
- (f) the payment of fees in respect of the providing of information from any register which is kept in terms of this Act; 50
- (g) any matter which in terms of this Act is required or permitted to be prescribed; and
- (h) any other matter the regulation of which, in the opinion of the Minister, may be necessary or desirable in order to achieve or promote the objects of this Act. 55
- (2) Any regulation made under subsection (1) may provide that any person who contravenes a provision thereof or fails to comply therewith shall be guilty of an

offence and on conviction be liable to a fine, or to imprisonment for a period not exceeding 6 months.

(3) Before the Minister makes any regulation under this section, he shall publish the regulations he intends to make by notice in the *Gazette*.

(4) After publication of the notice referred to in subsection (3) any interested person may, within a period stated in the notice, but not less than four weeks as from the date of publication of the notice, address representations in writing to the Director-General: Transport for submission to the Minister regarding the regulations concerned.

(5) After considering the representations referred to in subsection (4), the Minister may, whether or not he has adjusted the regulations concerned, publish those regulations in their final form by notice in the *Gazette*.

(6) Regulations referred to in subsection (1) shall, within 14 days after they were published under subsection (5), be laid upon the Table in Parliament if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ensuing ordinary session.

#### Service of documents and notices

44. Any notice, order or other document which is required in terms of this Act to be served or given to any person may be sent by post or may be delivered to such person personally or, at such person's residence or place of employment or business, to any other person who is apparently over the age of sixteen years.

#### Fees received and expenditure incurred

45. (1) All fees received in terms of this Act shall be paid into the State Revenue Account referred to in section 81 of the Republic of South Africa Constitution Act, 1983 (Act No. 110 of 1983).

(2) All expenditure incurred by the council in the exercise of its powers or the performance of its duties shall be defrayed from moneys appropriated by Parliament for this purpose.

#### Act binds State

46. The provisions of this Act, except the provisions which are applicable to criminal liability, shall bind the State.

#### Repeal of laws, and savings

47. (1) An air carrier's licence or an operating certificate issued in terms of the International Air Services Act, 1949 (Act No. 51 of 1949), and in force immediately prior to the commencement of this Act, shall be deemed to be an international air service licence or operating certificate, as the case may be, issued in terms of this Act and shall remain in force, subject to the conditions under which it was issued and in so far as it could have been issued under this Act, until such date as the Minister may determine by notice in the *Gazette*: Provided that that date shall be at least six months from the date of such notice.

(2) The council may, in its discretion, exempt the holder of an air carrier's licence referred to in subsection (1) from furnishing the particulars or the information referred to in section 15(4) if such holder applies for the issuing of a licence in terms of section 15.

(3) Any reference in any other law to the International Air Services Act, 1949, shall from the date of the commencement of this Act be deemed to be a reference to the corresponding provision of this Act.

(4) The laws mentioned in the Schedule are hereby repealed to the extent indicated in column 3 thereof.

#### Short title and commencement

48. This Act shall be called the International Air Services Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

**SCHEDULE****LAWS REPEALED****(Section 47)**

| No. and Year        | Title or Subject   | Extent of Repeal  |
|---------------------|--|---|
| Act No. 51 of 1949  | International Air Services Act, 1949                               | The repeal of the whole.  |
| Act No. 6 of 1964   | Air Services Amendment Act, 1964                                   | The repeal of the whole.  |
| Act No. 97 of 1986  | Transfer of Powers and Duties of the State President Act, 1986     | The repeal in the First and Second Schedules of items relating to the Air Services Act, 1949 (Act No. 51 of 1949).  |
| Act No. 9 of 1989   | Legal Succession to the South African Transport Services Act, 1989 | The repeal in Part 6 and Part 7 of Schedule 2 of items relating to the Air Services Act, 1949 (Act No. 51 of 1949). |
| Act No. 115 of 1990 | Air Services Licensing Act, 1990                                   | The repeal of Part I and Part II of the Schedule.   |
| Act No. 99 of 1992  | International Air Services Amendment Act, 1992                     | The repeal of the whole.  |