

DEPARTMENT OF TRANSPORT

NO. R. 1348

18 OCTOBER 2019

No. R. November 2015**RULES REGULATING THE CONDUCT OF THE PROCEEDINGS OF THE APPEALS COMMITTEE**

The Minister of Transport has, under section 155 of the Civil Aviation Act, 2009 (Act No. 13 of 2009), made the rules in the Schedule.

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Purpose and application of rules

1. (1) The purpose of these rules is to promote access to justice and to ensure that any person who feels aggrieved by the administrative decision of the Director of Civil Aviation is afforded the opportunity to have his or her matter adjudicated upon by the Appeal Committee.

(2) These rules are to be applied so as to facilitate the expeditious handling of appeals and the minimization of costs involved.

(3) In order to promote access to justice or when it is in the interest of justice to do so, an Appeal Committee may, at its seating, dispense with any provision of these rules and give directions as to the procedure to be followed by the parties so as to dispose of the action in the most expeditious and least costly manner.

Definitions

2. (1) In these rules and in the forms annexed hereto any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned and, unless the context otherwise indicates-

"the Act" means the Civil Aviation Act, 2009 (Act No. 13 of 2009).

"appellant", "respondent" and **"party"** include the attorney or counsel appearing for any such party;

"deliver" means to file with the Secretariat and serve a copy on the opposite party either by hand-delivery, registered post, facsimile or electronic mail, and "delivery", "delivered" and "delivering" have corresponding meanings;

"Electronic Communications and Transactions Act, 2002" means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

"notice" means notice in writing;

“Regulations” means the Civil Aviation Regulations, 2011;

“Appeal Secretariat” means officials in the Civil Aviation Branch of the Department of Transport designated to perform the administrative and secretarial services for the Appeals Committee;

“sheriff” means a person appointed in terms of section 2 of the Sheriffs Act, 1986 (Act No. 90 of 1986), and also a person appointed in terms of section 5 and section 6 of that Act as an acting sheriff and a deputy sheriff, respectively;

“signature” includes an advanced electronic signature as defined and described in Chapters I, II and III of the Electronic Communications and Transactions Act, 2002 and this also applies to "sign", "signing" and "signed";

(2) A Saturday, Sunday or public holiday shall not, unless the contrary appears, be reckoned as part of any period calculated in terms of these rules.

Jurisdiction of the Appeal Committee

3. (1) Any person or entity aggrieved may appeal against the decision of the Director to –

- (a) give or refuse prior written approval to any person appointed to perform any function in terms of the Act or the regulations for such person or his or her spouse, immediate family member, life partner or business associate, to hold any financial interest in any civil aviation activity or the civil aviation industry as contemplated in section 98 of the Act;
- (b) refuse such person’s or entity’s application for exemption, registration, licence, certificate, approval or authorisation;
- (c) refuse to designate one or more persons as inspectors, authorised officers or persons in terms of the Act;

- (d) refuse to issue, subject to any condition or restriction, such person's or entity's exemption, registration, licence, certificate, approval or authorization in terms of the Act;
- (e) suspend, cancel, endorse or vary such person's or entity's exemption, registration, licence, certificate, approval or authorisation in terms of the Act;
- (f) designate or refuse to designate or withdrawal of a designation as inspectors, authorised officers or authorised persons contemplated in section 88(1) of the Act;
- (g) refuse to lift a grounding order as contemplated in section 115(2) of the Act;
- (h) granting or refusal to grant exemption as contemplated in section 130 of the Act; or
- (i) issue, amend or withdraw a technical standard for civil aviation in terms of section 162(1)(a).

Lodging of Appeal

4. (1) Any person who feels aggrieved by the administrative decision of the Director may lodge an appeal to the Appeal Committee within 30 days after receipt of the reasons for such a decision.

(2) The notice of appeal must state the Appellant's postal, facsimile or electronic mail addresses, where available.

(3) The appeal must be lodged with the Secretariat as advised on the letter conveying the decision against which the appeal is made.

(4) A copy of the appeal must be served to the Respondent (SACAA), as per the details contained in the letter conveying the decision against which the appeal is made.

(5) The appeal must be accompanied by proof that a copy has been served on the Respondent (SACAA) as well as proof of payment of appeal fees as prescribed in Part 187 of the Civil Aviation Regulations, 2011.

(6) Within 15 days of receipt of the appeal, the SACAA shall furnish the Appellant with the record and supporting documents for the administrative decision taken.

(7) The Appellant may, within 15 days of receipt of the record, supplement the appeal papers, if necessary and submit them to the Appeal Secretariat and Respondent.

(8) The Respondent shall within 30 days of receipt of the appeal, with or without the supplementary papers, lodge its reply and arguments against the appeal to both the Appeal Secretariat and the Appellant.

(9) Every appeal shall set forth-

(a) the surname and first names of the Appellant, his or her residence or place of business, occupation and employment address; and

(b) if the Appellant sues in a representative capacity, such capacity.

(10) The appeal may be brought by the Appellant concerned or a duly authorised employee or legal representative of such Appellant.

Rules relating to pleadings generally

5. (1) Every pleading shall be signed by a person legally authorised to represent that party or, if a party is unrepresented, by that party.

(2) Every pleading shall be divided into paragraphs (including sub-paragraphs) which shall be consecutively numbered and shall, as nearly as possible, each contain a distinct averment.

(3) Every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his or her claim or answer to any pleading, as the case may be, with sufficient particularity to enable the opposite party to reply thereto.

(4) When in any pleading a party denies an allegation of fact in the previous pleading of the opposite party, he or she shall not do so evasively, but shall answer the point of substance.

(5) A party who, in such party's pleading, relies upon a document, shall ensure that a copy thereof or of the part relied on in the pleading is annexed to the pleading.

(6) A party who relies on an agreement governed by legislation shall state the nature and extent of the party's compliance with the relevant provisions of such legislation.

(7) If a party fails to comply with any of the provisions of this rule, such pleading shall be deemed to be irregular.

Service of process, notices and other documents

6. (1) A party serving any process, notice or other document to the other party shall provide the Secretariat with the original or a certified copy of such process, notice or document, and serve a copy to the other party.

(2) All process shall, subject to the provisions of this rule, be served upon the person affected thereby by delivery of a copy thereof in one or other of the following manners:

- (a) to the said person personally or to his or her duly authorised agent;
- (b) at the residence or place of business of the said person or his or her duly authorised agent;
- (c) if the person so to be served has chosen a *domicilium citandi*, by delivering or leaving a copy thereof at the *domicilium* so chosen;
- (d) to a legal representative who is duly authorised in writing to accept service on behalf of the person upon whom service is to be effected in any applicable manner prescribed in this rule; or
- (e) by facsimile or electronic mail provided for that purpose by the other party.

(3) Service of a subpoena on a witness may be effected at a reasonable time before attendance is required in any manner prescribed in this rule.

Discovery of documents

7. The Appeal Committee may, during the course of any proceeding, order the production by any party thereto under oath of any document or recording in his or her

power or control relating to any matter in question in such proceeding as the Appeal Committee may deem fit.

Subpoena

8. (1) Any party desiring the attendance of any person to give evidence at a hearing, may request the Secretariat to issue subpoena for that purpose, each of which subpoena shall contain the names of not more than four persons, and the service thereof upon any person therein named shall be effected by the sheriff or a member of the South African Police Services.

(2) If any witness has in his or her possession or control any deed, instrument, writing or thing which the party requiring his or her attendance desires to be produced in evidence, the subpoena shall specify such document or thing and require him or her to produce it at the hearing.

(3) There shall be handed to the sheriff or member of the South African Police Services together with a subpoena so many copies thereof as there are witnesses to be summoned.

(4) The subpoena shall stipulate how the costs of attendance of the witness shall be covered by the party requiring his or her attendance.

Hearing

9. (1) The hearing of an appeal shall take place at the place determined by the Chairperson of the Appeal Committee.

(2) The Appellant shall paginate and index the appeal papers and deliver four copies to the Secretariat and a copy to the Respondent.

(3) The Appeal Secretariat shall set the date for the hearing only after receipt of four files of paginated and indexed appeal papers.

(4) The notice of set down shall be served on all the parties not less than 10 days before the hearing.

(5) On the Day of the hearing, the Appellant will be afforded an opportunity to state his or her case first, call witnesses where necessary and produce evidence.

(6) The Respondent will be afforded an opportunity to cross examine any witnesses that have been called by Appellant.

(7) The Respondent will be afforded an opportunity to respond, call witnesses where necessary and produce evidence.

(8) Should the Appeal Committee deem it fit, they can call any witness that they feel can assist them in reaching a just and fair decision.

(9) Appeal Committee members may ask questions to clarify any issues that they may require clarity on. The Appellant will be afforded an opportunity to reply to the Respondent's submission.

(10) Both parties will be afforded an opportunity to make closing arguments.

(11) A witness who is not a party to the proceedings may be ordered by the Appeal Committee to leave the hearing until his or her evidence is required or after his evidence has been given; or to remain in the hearing after his or her evidence has been given until the appeal is terminated or adjourned.

(12) The Appeal Committee may, before proceeding to hear evidence, require the parties to state shortly the issues of fact or questions of law which are in dispute and may record the issues so stated.

(13) If it appears to the Appeal Committee *mero motu* that there is a question of law or fact which may conveniently be decided either before any evidence is led or separately from any other question, the Appeal Committee may make an order

directing the disposal of such question in such manner as it may deem fit and may order that all further proceedings be stayed until such question has been disposed of.

(14) If the question in dispute is a question of law and the parties are agreed upon the facts, the facts may be admitted in the hearing, either viva voce or by written statement, by the parties and recorded by the Appeal Committee and judgment may be given thereon without further evidence.

(15) When questions of law and issues of fact arise in the same case and the Appeal Committee is of opinion that the case may be disposed of upon the questions of law only, the Appeal Committee may require the parties to argue upon those questions only and may give its decision thereon before taking evidence as to the issues of fact and may give final judgment without dealing with the issues of fact.

(16) If on the pleadings the burden of proof is on the Appellant, he or she shall first adduce his or her evidence.

(17) Where, on the pleadings the burden of proof is on the respondent, the Respondent shall first adduce his or her evidence, and if necessary, the Appellant shall thereafter adduce his or her evidence.

(18) In a case of dispute as to the party upon whom the burden of proof rests, the Appeal Committee shall direct which party shall first adduce evidence.

(19) Any party may, with the leave of the Appeal Committee, adduce further evidence at any time before judgment; but such leave shall not be granted if it appears to the Appeal Committee that such evidence was intentionally withheld out of its proper order.

(20) The Appeal Committee may at any time before judgment, on the application of any party or of its own motion, recall any witness for further examination.

(21) Any witness may be examined by the Appeal Committee as well as by the parties.

(22) After the evidence on behalf of both parties has been adduced, the party who first adduced evidence may first address the Appeal Committee and thereafter the other party and the party who first adduced evidence may reply.

(23) The Appeal Committee may request the Department to make statements or answer questions on policy and legislative matters.

(24) The Appeal Committee may adjourn the proceedings at any time to consult amongst themselves or with any person on any matter relevant for the proceedings.

Decision

10. (1) The Appeal Committee has 21 days to make its decision, which may include a directive regarding the appeal fees; provided that if the Appeal Committee decides to wholly set aside the decision of the Director, the appeal fees shall be returned to the appellant.

(2) The decision shall be delivered to each of the parties in writing within 7 days, after the decision has been made, using any of the acceptable methods of delivery of documents.

(3) The Appeal Secretariat shall keep records of proof of delivery of decisions of the Appeal Committee.

Record of proceedings

11. (1) Minutes of record shall forthwith be made of-

- (a) any judgment given by the Appeal Committee;
- (b) any oral evidence given in the hearing;
- (c) any objection made to any evidence received or tendered; and

(d) the proceedings of the Appeal Committee generally, including the record of any inspection in loco.

(2) The addresses of the parties, oral evidence given, any exception or objection taken in the course of the proceedings, the rulings and judgment of the Appeal Committee and any other portion of the proceedings, may be noted in shorthand either verbatim or in narrative form or recorded by mechanical, electronic or digital means.

(3) Shorthand notes taken in terms of this rule shall be certified as correct by the shorthand writer and filed with the record of the case by the Appeal Secretariat.

(4) Any shorthand notes, and any transcript thereof, certified as correct, shall be deemed to be correct and shall form part of the record of the proceedings in question.

(5) A copy of any transcript made simultaneously with the transcription of proceedings made by mechanical, electronic or digital means may, upon application to the Secretariat, be supplied to any person upon payment of the prescribed fee.

(6) Any reference in this rule to shorthand notes or to a transcription or transcript of such notes, or to a copy of such transcript, or to a person transcribing such notes, shall be construed also as a reference to a record of proceedings made by mechanical, electronic or digital means, to a transcription or transcript of such record, or to a copy of such transcript, to a person employed for the making of such mechanical, electronic or digital record, or to a person transcribing such record, as the case may be.

Adjournment and postponement

12. (1) The hearing of an appeal may be adjourned or postponed by consent of the parties or by the Appeal Committee, either on application or request or of its own motion.

(2) Where an adjournment or postponement is made sine die, any party may request the Appeal Secretariat to reinstate the matter for further hearing on a day generally or specially fixed by the Appeal Secretariat, not earlier than 10 days after delivery of notice to the parties.

Non-appearance of a party

13. (1) If an Appellant does not appear at the communicated scheduled time for the hearing of an appeal, the appeal may be dismissed, and the appeal fees forfeited.

(2) If a Respondent does not so appear, a judgment (not exceeding the relief claimed) may be given and the appeal fees returned to the Appellant.

Representation of parties

14. (1) A party may be represented in the appeal proceedings either in person or by an attorney or advocate.

(2) A company or other incorporated body may act through an officer thereof nominated by it for that purpose.

(3) A partnership or group of persons associated for a common purpose in doing so may act through a member thereof nominated by it for that purpose.

(4) It shall not be necessary for any person to file a power of attorney to act, but the authority of any person acting for a party may be challenged by the other party within 10 days after he or she has noticed that such person is so acting or with the leave of the Appeal Committee on good cause shown at any time before judgment and thereupon such person may not, without the leave of the Appeal, so act further until he or she has satisfied the Appeal Committee that he or she has authority so to act and the Appeal Committee may adjourn the hearing to enable him or her to do so.

Urgent Appeals

15. An Appeal Committee, if satisfied that a matter is urgent, may make an order dispensing with the forms and service provided for in these rules and may dispose of the matter at such time and place and in accordance with such procedure (which shall as far as practicable be in terms of these rules) as the Appeal Committee deems appropriate.

Amendment of pleadings

16. (1) Any party desiring to amend a pleading or document other than an affidavit, filed in connection with the appeal, shall notify all other parties of his or her intention to amend and shall furnish the particulars of the amendment.

(2) The notice referred to in subrule (1) shall state that unless written objection to the proposed amendment is delivered within 10 days of delivery of the notice of amendment, the amendment will be effected.

(3) An objection to a proposed amendment shall clearly and concisely state the grounds upon which the objection is founded.

(4) If an objection which complies with subrule (3) is delivered within the period referred to in subrule (2), the party wishing to amend may, within 10 days, lodge an application for leave to amend.

(5) Unless the Appeal Committee otherwise directs, a party who is entitled to amend shall effect the amendment by delivering each relevant page in its amended form.

(6) Any party affected by an amendment may, within 15 days after the amendment has been effected or within such period as the Appeal Committee may determine, make any consequential adjustment to the documents filed by him or her.

Filing, preparation and inspection of documents

17. (1) (a) All documents filed with the Appeal Committee, other than exhibits or facsimiles thereof, shall be clearly and legibly printed or typewritten in permanent black or blue-black ink on one side only of paper of good quality and of A4 standard size.
- (b) A document shall be deemed to be typewritten if it is reproduced clearly and legibly on suitable paper by a duplicating, lithographic, photographic or any other method of reproduction.
- (2) Stated cases, affidavits, grounds of appeal and the like shall be divided into concise paragraphs which shall be consecutively numbered.
- (3) In defended matters, an Appellant shall, not later than 10 days prior to the hearing of the matter, collate, number consecutively, and suitably secure, all pages of the documents delivered and shall prepare and deliver a complete index thereof.
- (4) Every affidavit filed with the Appeal Secretariat by or on behalf of a Respondent shall, if he or she is represented, on the first page thereof bear the name and address of the attorney filing it.
- (5) The Appeal Secretariat may reject any document which does not comply with the requirements of this rule.
- (6) Any person, with leave of the Appeal Secretariat and on good cause shown, may examine and make copies of all documents in an appeal file at the office of the Secretariat.

Amendment of Rules

18. (1) Any interested person may make proposals for the amendment of these rules.

(2) The proposed amendments shall be submitted to the Appeal Secretariat, in writing, together with a brief motivation for the proposed amendment as well as the interest of the person making such proposal.

(3) The proposed amendments may only be submitted for the consideration of the Minister after consultation with relevant stakeholders.

Short title and commencement

19. These rules are called the Rules Regulating the Conduct of the Proceedings of the Appeal Committee and come into force on the date of publication.