

Namibia

Civil Aviation Act, 2016

Act 6 of 2016

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Civil Aviation Act, 2016

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Republic of Namibia
Annotated Statutes

Civil Aviation Act, 2016

Act 6 of 2016

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Assented to on 23 May 2016

Commenced on 1 November 2016 by Commencement of Civil Aviation Act, 2016

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[Amended by Abolition of Payment by Cheque Act, 2022 (Act 16 of 2022) on 15 March 2023]

ACT

To consolidate the laws relating to civil aviation and civil aviation offences; to provide for the powers and functions of the Minister in relation to civil aviation; to establish the Namibia Civil Aviation Authority and to provide for its powers and functions; to establish the Air Navigation Services in the Authority; to provide for a civil aviation regulatory and control framework for maintaining, enhancing and promoting the safety and security of civil aviation for ensuring the implementation of international aviation agreements; to establish the Directorate of Aircraft Accident and Incident Investigations and to provide for its powers and functions; to provide for the establishment of Namibia Register of Aircraft and the Civil Aviation Registry; to repeal the laws relating to civil aviation and civil aviation offences; and to provide for incidental matters.

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

Part 1 – INTRODUCTORY PROVISIONS

1. Definitions

In this Act, unless the context otherwise indicates -

“**accident**” means an occurrence that is associated with the operation of an aircraft and takes place between the time any person boards the aircraft with the intention of flight and such time as all such

persons have disembarked and the engine or any propellers or rotors come to rest, being an occurrence in which -

- (a) a person is fatally or seriously injured as a result of -
 - (i) being in the aircraft;
 - (ii) direct contact with any part of the aircraft, including any part that has become detached from the aircraft; or
 - (iii) direct exposure to jet blast -except when the injuries are self-inflicted or inflicted by other persons, or when the injuries are to stowaways hiding outside the areas normally available to passengers and crew;
- (b) the aircraft sustains damage or structural failure that -
 - (i) adversely affects the structural strength, performance, or flight characteristics of the aircraft; and
 - (ii) would normally require major repair or replacement of the affected component,'except engine failure or damage that is limited to the engine, its cowlings, or accessories, or damage limited to propellers, wing tips, antennas, tyres, brakes, fairings, small dents, or puncture holes in the aircraft skin; or
- (c) the aircraft is missing or is completely inaccessible;

“act of violence” means an act which, if committed in Namibia, would constitute -

- (a) an assault constituting the crime, whether common law or statutory, of -
 - (i) aggravated assault;
 - (ii) assault with intent to injure;
 - (iii) assault on a child or by a male on a female;
 - (iv) common assault;
 - (v) assault with a weapon;
- (b) any of the following crimes whether common law or statutory -
 - (i) wounding with intent;
 - (ii) injuring with intent;
 - (iii) injuring by unlawful act;
 - (iv) aggravated wounding or injury;
 - (v) disabling;
 - (vi) discharging a firearm or doing a dangerous act with intent;
 - (vii) using any firearm against a law enforcement officer;
 - (viii) commission of a crime with a firearm;
 - (ix) acid throwing;
 - (x) poisoning with intent;
 - (xi) setting traps;
 - (xii) endangering transport; or
 - (xiii) kidnapping;

“aerodrome” means any defined area of land or water intended or designed to be used either wholly or partly for the landing, departure, and surface movement of aircraft, and includes any buildings, installations, and equipment on or adjacent to any such area used in connection with the aerodrome or its administration;

“aerodrome control service” means an air traffic control service provided for the control of aerodrome traffic;

“aerodrome flight information service” means a service provided for the purpose of giving advice and information useful for the safe and efficient conduct of flights in the vicinity of an aerodrome;

“aerodrome traffic” means all -

- (a) traffic in the manoeuvring area of an aerodrome; and
- (b) aircraft flying in the vicinity of an aerodrome;

“aerodrome traffic circuit” means the pattern flown by aircraft operating in the vicinity of an aerodrome;

“aeronautical product” means anything that comprises or is intended to comprise any part of an aircraft or that is or is intended to be installed in or fitted or supplied to an aircraft, and includes fuel and other similar consumable items necessary for the operation of the aircraft;

“aircraft” means any machine that can derive support in the atmosphere from the reactions of the air otherwise than by the reactions of the air against the surface of the earth;

“aircraft flying in the vicinity of an aerodrome” means any aircraft that is in, entering, or leaving an aerodrome traffic circuit;

“air navigation facility” means premises used for the handling of cargo, baggage or mail, an aircraft hangar, a fuel storage area, an on board services preparation facility and any other premises, building, structure or place to which the public has no right of access and in which a service is rendered for the operation of an airport or aircraft or for the public at an airport or on board an aircraft, whether or not such premises, building, structure or place are situated within the boundaries of a designated airport;

“air navigation services” means services provided to air traffic during all phases of operations to ensure their safe and efficient movement, and includes -

- (a) air traffic control services, including air traffic control services for arriving and departing controlled flights, for controlled flights in controlled areas or for traffic within any manoeuvring area and other aerodrome traffic;
- (b) air traffic advisory services provided within advisory airspace to ensure separation, insofar as is practical, between aircraft which are operating on flight plans in accordance with Instrument Flight Rules;
- (c) flight information services;
- (d) alerting services provided to notify appropriate organisations regarding aircraft in need of search and rescue aid, and to assist such organisations as may be required;
- (e) communications, navigation and surveillance services;
- (f) meteorological services for air navigation;
- (g) search and rescue alerting coordination services; and
- (h) aeronautical information services for the provision of aeronautical information and data necessary for the safety, regularity and efficiency of air navigation;

“airport” means any defined area of land or water intended or designed to be used either wholly or partly for the landing, departure, movement, or servicing of aircraft, and includes -

- (a) any other area declared by the Minister to be part of the airport; and

- (b) any buildings, installations, and equipment on or adjacent to any such area used in connection with the airport or its administration;

“air service” means an air transport service or an aerial work service, whether regular or casual;

“air traffic” means all aircraft in flight or operating on any manoeuvring area of an aerodrome;

“air traffic control service” means a service provided for the purposes of -

- (a) preventing collisions -
 - (i) between aircraft; and
 - (ii) between aircraft and obstructions on any manoeuvring area; and
- (b) expediting and maintaining a safe and efficient flow of air traffic;

“air traffic service”, includes -

- (a) any aerodrome control service;
- (b) any area control service;
- (c) any approach control service;
- (d) any flight information service;
- (e) any aerodrome flight information service;
- (f) any alerting service; and
- (g) any other air traffic service considered by the Executive Director to be necessary or desirable for the safe and efficient operation of the civil aviation system;

“alerting service” means an air traffic service provided to notify appropriate organisations regarding aircraft in need of search and rescue aid, and to assist such organisations as required;

“approach control service” means an air traffic control service for arriving or departing controlled flights;

“approved organisation” means -

- (a) an aeronautical authority of a contracting state of ICAO; or
- (b) an organization or body declared to be an approved organisation under [section 4\(1\)\(b\)](#);

“area control service” means an air traffic control service provided for controlled flights in controlled airspace;

“Arms and Ammunition Act” means the Arms and Ammunition Act, 1996 (Act [No. 7 of 1996](#));

“auditor” means a person registered in terms of the Public Accounts’ and Auditors’ Act, 1951 (Act [No. 51 of 1951](#));

“authorised person” means -

- (a) any member of the Namibian Police Force as defined in section 1 of the Police Act, 1990 (Act [No.19 of 1990](#));
- (b) any person appointed in writing by the management of a security designated airport, with the approval of the Minister;
- (c) any member of the Namibian Defence Force as defined in the Defence Act, 2002 (Act [No.1 of 2002](#));
- (d) any person designated in writing by the Executive Director as an authorised person in terms of [section 37\(1\)](#); or

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

“**Authority**” means the Namibia Civil Aviation Authority established by [section 8](#);

“**aviation document**” means any licence, permit, certificate, or other document issued under this Act to or in respect of any person, aircraft, aerodrome, aeronautical procedure, aeronautical product, or aviation related service;

“**aviation related facility**” means any installation, equipment, facility or service, including any aerodrome operated in support of or in conjunction with the civil aviation system;

“**aviation related service**” means any equipment, facility or service, including any air traffic service operated in support of or in conjunction with the civil aviation system, and includes the provision of aeronautical products;

“**aviation security officer**” means a person employed as such by an aviation security service organization pursuant to this Act;

“**aviation security services**” means services provided in accordance with this Act which are related to the provision and promotion of aviation security in Namibia;

“**aviation security services provider**” means a provider of aviation security services in Namibia certificated under this Act;

“**baggage**”, in relation to any contract of carriage, means checked baggage or baggage, personal effects, or other articles, not being checked baggage, in the possession of the passenger, or in the possession of another person, being a person accompanying the passenger or a servant or agent of the carrier, whether the contract of carriage is for international carriage or domestic carriage;

“**Board**” means the Board of directors of the Authority established by [section 11](#);

“**cargo**”, in relation to any contract of carriage, means all kinds of movable property, including animals, but excludes baggage and mails or postal articles whether the contract of carriage is for international carriage or domestic carriage;

“**carrier**”, in relation to any contract of carriage, includes a contracting carrier and an actual carrier whether the contract of carriage is for international carriage or domestic carriage;

“**Chicago Convention**” means the Convention on International Civil Aviation signed in Chicago on 7 December 1944, and adopted by section 1 of the Aviation Amendment Act, 1947 (Act [No. 42 of 1947](#)), and contained in Schedule 1, and includes -

- (a) any amendment to the Convention that has entered into force under Article 94(a) of the Convention and has been ratified by Namibia; and
- (b) any Annex or amendment to any Annex accepted under Article 90 of the Convention, to the extent ratified by Namibia; and
- (c) the international standards and procedures adopted and amended by the International Civil Aviation Organisation under Article 37 of the Convention, but subject to any notification of differences by Namibia pursuant to Article 38 of the Convention;

“**Civil Aviation Registry**” means the Civil Aviation Registry established under [section 52](#);

“**commander**”, in relation to an aircraft, or “**commander of an aircraft**” means the pilot for the time being in lawful command of the aircraft;

“**commercial air transport operation**” means an aircraft operation involving the transport of passengers, cargo or mail or aerial work for remuneration or hire;

“**contract**”, in relation to any contract of carriage, includes an arrangement made without consideration whether the contract of carriage is for international carriage or domestic carriage;

“controlled airspace” means an airspace of defined dimensions within which an air traffic control service is provided to controlled flights;

“controlled flight” means any flight that is provided with or required by this Act to make use of an air traffic control service;

“crew member” means a person assigned by an operator to perform such functions onboard an aircraft during a flight;

“customs officer” means an “officer” as defined in section 1 of the Customs and Excise Act, 1998 (Act [No. 20 of 1998](#));

“dangerous goods” means articles or substances that are capable of posing risk to health, safety, property or the environment, and -

- (a) are listed in, or classified in accordance with the ICAO’s Technical Instructions for the Safe Transportation of Dangerous Goods by Air; or
- (b) while not so listed or classified as referred to in paragraph (a), nevertheless have features or properties that in the opinion of the Executive Director might reasonably qualify them for listing or classification as dangerous goods under the ICAO’s Technical Instructions for the Safe Transportation of Dangerous Goods by Air;

“Directorate” means the Directorate of Aircraft Accident and Incident Investigations established by [section 73\(1\)](#);

“Director of Investigations” means the person designated under [section 73\(2\)](#) as Executive Director of Aircraft Accident and Incident Investigations;

“Executive Director” means the person appointed under [section 34](#) as the chief executive officer of the Authority and known as Executive Director of Civil Aviation;

“Extradition Act” means the Extradition Act, 1996 (Act [No. 11 of 1996](#));

“flight information service” means an air traffic service provided for the purpose of giving advice and information intended for the safe and efficient conduct of flights;

“foreign in-flight security officer” means an enforcement officer or person with authorisation from a country other than Namibia who is -

- (a) authorised to act on an aircraft that is in flight by the State that has issued the air operating certificate, or its equivalent, under which the air operation is conducted; and
- (b) subject to an in-flight security officer arrangement or agreement between Namibia and the State that has issued the air operating certificate, or its equivalent, under which the air operation is conducted;

“foreign licence” or “foreign medical assessment” or “foreign medical certificate” means a licence, medical assessment or medical certificate issued by the appropriate authority of an ICAO member state other than Namibia;

“Government entity” means a ministry, office or agency of Government, Public enterprise or other institution or body wholly owned or controlled by the Government and operated within the national sphere of government;

“Hague Convention” means the Convention for the Suppression of Unlawful Seizure of Aircraft, done at Hague on 16 December 1970, contained in Schedule 3;

[This Convention is sometimes referred to in brief as the “Hague Hijacking Convention”.]

“holder”, in relation to any aviation document, includes any person entitled to exercise privileges in respect of the document;

“ICAO” means the International Civil Aviation Organisation established under the Chicago Convention, and includes any successor to the Organisation;

“incident” means any occurrence, other than an accident, that is associated with the operation of an aircraft and affects or could affect the safety of operation;

“in flight”, in relation to an aircraft, means from the time when all its external doors are closed after embarkation until the time when any external door is opened for disembarkation, but in the case of a forced landing, an aircraft is in flight -

- (a) until the time when the competent authorities of the country in which the forced landing takes place; or
- (b) in the case where the forced landing takes place in a place that is not within the territorial limits of any country, until the time when the competent authorities of any country,

assume responsibility for the aircraft and for persons and property on board the aircraft;

“in-flight security officer” means a member of the Namibian Police authorised by the Inspector-General pursuant to [section 159](#) to be an in-flight security officer;

“Inquests Act” means the Inquests Act, 1993 (Act [No. 6 of 1993](#));

“in service”, in relation to an aircraft, means from the time when pre-flight preparation of the aircraft by ground personnel or by the aircraft crew begins for a specific flight until -

- (a) the flight is cancelled;
- (b) 24 hours after the aircraft, having commenced the flight, lands;
- (c) the aircraft, having commenced the flight, makes a forced landing and any competent authorities assume responsibility for the aircraft and for persons and property on board the aircraft; or
- (d) the aircraft, having commenced the flight, ceases to be in flight without having landed.

“international airport” means any airport designated as an airport of entry and departure for international air traffic where the formalities incident to customs, immigration, public health, animal and plant quarantine, and similar procedures are carried out;

“international flight”, for the purposes of [section 4\(1\)](#), means flight, whether conducted for private or commercial purposes, which arrives from a place outside Namibia or which departs for a destination outside Namibia;

“life imprisonment” means imprisonment for the rest of the natural life of a convicted person without parole;

“manoeuvring area” means that part of an aerodrome to be used for the take-off and landing of aircraft and for the surface movement of aircraft associated with take-off and landing, but excludes areas set aside for loading, unloading, or maintenance of aircraft;

“military conveyance” means the transportation of goods or persons by means of an aircraft that is operated by or on behalf of the Ministry responsible for defence or a visiting force;

“Minister” means the Minister responsible for transport;

“Ministry” means the Ministry responsible for the administration of transport affairs;

“Montreal Convention” means the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation done at Montreal on 23 September 1971, contained in Schedule 5;

[This Convention is generally referred to internationally as the “Sabotage Convention”, whereas the “Montreal Convention” usually refers to the “Convention for the Unification of Certain Rules relating to International Carriage by Air (Montreal Convention), 1999”.]

“Montreal Protocol” means the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation done at Montreal on 24 February 1988, contained in Schedule 6;

[This Protocol does not seem to have a short name in common use at the international level, but “Sabotage Protocol” would probably be a more appropriate short name than “Montreal Protocol”.]

“Namibia” means the Republic of Namibia as defined in Article 1(4) of the Namibian Constitution, and includes the territorial sea, contiguous zone and the exclusive economic zone of Namibia as defined in sections 2, 3A and 4 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act [No. 3 of 1990](#));

“Namibia Register of Aircraft” means the Namibia Register of Aircraft established under [section 50](#);

“Namibian aircraft” means an aircraft duly registered in Namibia in terms of [section 70](#);

“navigation installation” -

- (a) means any building, facility, work, apparatus, equipment, or place, whether or not part of an aerodrome, that is intended to assist in the control of air traffic or as an aid to air navigation; and
- (b) includes any land adjacent to any such building, facility, work, apparatus, equipment, or place, and used in connection therewith;

“NCASP” means the National Civil Aviation Security Program developed in terms of [section 118](#);

“operate”, in relation to an aircraft, means to fly or use the aircraft, or to cause or permit the aircraft to fly, be used, or be in any place, whether or not the person is present with the aircraft;

“owner”, in relation to any aircraft, includes a person entitled to the possession of the aircraft for 28 days or longer;

“participant” means a person who performs any function or activity, or who occupies any position, or offers or undertakes the provision of any service or product, or does any other thing, for which an aviation document is required;

“passenger”, in relation to any contract of carriage, means a person carried pursuant to a contract of carriage of such person whether the contract of carriage is for international carriage or domestic carriage, and includes a person who has reported to an employee or agent of the carrier for the purpose of going on board an aircraft pursuant to a contract to carry him as a passenger;

“Permanent Secretary” means the Permanent Secretary of the Ministry;

“pilot-in-command”, in relation to an aircraft, means the pilot for the time being in lawful command of the aircraft;

“police officer” means a member of the Namibian Police Force as defined in section 1 of the Police Act, 1990 (Act [No. 19 of 1990](#));

“prescribed” means prescribed by regulation;

“Prevention and Combating of Terrorist and Proliferation Activities Act” means the Prevention and Combating of Terrorist and Proliferation Activities Act, 2014 (Act [No. 4 of 2014](#));

“Public Enterprises Governance Act” means the Public Enterprises Governance Act, 2006 (Act [No. 2 of 2006](#));

“Public Service Act” means the Public Service Act, 1995 (Act [No. 13 of 1995](#));

“regulation” means a regulation made under this Act;

“security designated aerodrome” means any aerodrome or company airport as defined in the Airports Company Act, 1998, (Act [No. 25 of 1998](#)), and includes any airport, helistop or heliport designated as a security designated aerodrome under [section 130](#);

“security designated navigation installation” means a navigation installation designated as a security navigation installation under [section 130](#);

“security restricted area” means an area that the Executive Director has declared to be a security restricted area under [section 131](#);

“State” means the Republic of Namibia;

“sterile area” means the area at an aerodrome between the passenger inspection and screening station and the aircraft into which access is strictly controlled;

“this Act”, includes the regulations;

“Tokyo Convention” means the Convention on Offences and Certain Other Acts Committed on Board Aircraft done at Tokyo on 14 September 1963, contained in Schedule 3; and

“Transit Agreement” means the International Air Services Transit Agreement drawn up at Chicago on 7 December, 1944, and adopted by section 2 of the Aviation Amendment Act, 1946 (Act [41 of 1946](#)), contained in Schedule 2, and includes any amendments thereof and additions thereto binding upon Namibia.

2. Application of Act

(1) Subject to subsection (2) -

- (a) this Act; and
- (b) the Chicago Convention and the Transit Agreement, except to the extent that they are inconsistent with or are expressly excluded by this Act,

apply to -

- (i) a person, an aircraft, aerodrome, aeronautical product, air service, and aviation related service, in Namibia;
- (ii) a Namibian aircraft whether within or outside Namibia;
- (iii) a holder of an aviation document while inside or outside Namibia and exercising or purporting to exercise privileges accorded by the document; and
- (iv) a foreign registered aircraft operating in Namibia.

(2) Despite subsection (1), the Minister, acting on the recommendation of the Executive Director, may, by agreement with the appropriate foreign aeronautical authority -

- (a) transfer to the aeronautical authority in the country of a foreign operator all or part of the responsibilities for a Namibian aircraft operated by that foreign operator that the Minister or the Executive Director has under this Act;
- (b) accept for the Minister or the Executive Director all or part of the responsibilities for foreign registered aircraft operated by a Namibian operator that arise under this Act.

(3) A Namibian aircraft, while being operated over the high seas, must be operated in a manner that complies with the Rules of the Air contained in Annex 2 of the Chicago Convention.

(4) Except where an act is required in order to comply with the laws of such foreign state, a holder of an aviation document who, while outside Namibia and exercising or purporting to exercise the privileges accorded by the document commits an act or omission that would constitute an offence if it were committed in Namibia is deemed to have committed an offence as if the act or omission had occurred in Namibia.

(5) Nothing in this section may be interpreted as requiring a person or aircraft to contravene or be operated in contravention of a law of a foreign state that applies to or in respect of the person or aircraft.

- (6) Nothing in this Act may be interpreted as limiting the privileges or immunities of -
 - (a) any foreign military aircraft; or
 - (b) the officers and crew of any foreign military aircraft.
- (7) This Act does not apply -
 - (a) to aircraft or aerodromes belonging to the Ministry of Defence or for the time being leased, commandeered or sequestered or otherwise used exclusively by the Namibia Defence Force; and
 - (b) to any person employed on or in connection with the aircraft or aerodrome referred to in paragraph (a), irrespective of whether such person is so employed in a military or civil capacity.
- (8) The Minister, after consultation with the Minister of Defence, may by notice in the Gazette, make any provision of this Act applicable to any aircraft, aerodrome or person referred to in subsection (7) with or without modification.

3. Application of international aviation agreements

- (1) The Minister, in accordance with [section 54](#), may issue such regulations as appear to him or her necessary for giving effect to any of the provisions of the Chicago Convention or the Transit Agreement.
- (2) If -
 - (a) the Chicago Convention or the Transit Agreement is amended;
 - (b) Namibia enters into or becomes party to an international aviation agreement; or
 - (c) an international aviation agreement is amended,the Minister may in accordance with [section 54](#) issue such regulations as appear to him or her necessary for carrying out and for giving effect to any of the provisions of the agreement or amendment.

Part 2 – POWERS AND FUNCTIONS OF MINISTER

4. Powers and functions of Minister

- (1) In ensuring the achievement of an integrated, safe, secure, responsive and sustainable transport system, and the implementation of the obligations of Namibia under international civil aviation agreements on civil aviation, the Minister may -
 - (a) subject to the Public Service Act, establish an aviation policy unit;
 - (b) declare an organization or body to be an approved organization;
 - (c) enter into technical or operational arrangements, or both, with civil aviation authorities of other countries;
 - (d) by notice in the Gazette, designate certain aerodromes within Namibia equipped with customs, immigration and other border control facilities as airports to be used for the arrival or departure of aircraft performing international flights.
- (2) The functions of the Minister are -
 - (a) to promote safety and security in civil aviation;

- (b) to administer the participation of Namibia in the Chicago Convention and any other international aviation convention, agreement, or understanding to which Namibia is a party;
- (c) to ensure that aviation security services are provided at all security designated aerodromes and security designated navigation installations;
- (d) to provide to the Executive Director or the Directorate such information, advice, services and resource as may be required and which may assist in the implementation of this Act;
- (e) to promote and assist other Government entities as appropriate in the effective use of other legislation affecting the safety and security of civil aviation in Namibia; and
- (f) to perform other functions imposed on the Minister by or under this Act or any other law.

5. Facilitation of aircraft navigation and clearance of aircraft, crews, passengers and cargoes

The Minister, in accordance with the Chicago Convention, must adopt all practicable measures -

- (a) to facilitate and expedite navigation by aircraft between Namibia and the territories of other States; and
- (b) to prevent unnecessary delays in the clearance of aircraft, crews, passengers and cargo, especially in the administration of the laws relating to immigration, quarantine and customs.

6. Removal of dangerous obstructions

- (1) The Minister may, by issuing a directive, require the removal of any building structure, tree or other object whatsoever on any land or water which, in the opinion of the Minister on the advice of the Executive Director, may constitute a danger to aircraft flying in accordance with normal aviation practice.
- (2) The Minister may, by issuing a directive, authorise such person or persons as he or she may think appropriate to remove or alter to such an extent as may be specified in the directive, such building, structure, tree or other object which is in contravention of a directive made under subsection (1).
- (3) A copy of every directive made under subsection (1) or (2) is served upon the owners or occupiers of all land affected by such directive.
- (4) In considering the making of any directive under this section the Minister must have due regard for the status of any building, structure, tree or any other object which may be granted protection or special status or be entitled to protection or the grant of special status in terms of any other law.
- (5) A person suffering loss or damage as a consequence of a directive issued under subsection (1) may claim compensation therefore and, in default of an agreement on the amount of compensation, such amount is fixed by a court of competent jurisdiction.
- (6) Where a directive is issued -
 - (a) in relation to an airport owned by the State the compensation is paid by the State; or
 - (b) in relation to any other airport the compensation is paid by the owner of the airport.
- (7) Despite subsection (5), no compensation is payable for any loss or damage suffered as a consequence of the directive made under subsection (1), if the building, structure, tree or object has been erected or planted in contravention of any law.

7. Prohibitions and restrictions on use of land and airspace

- (1) For the purpose of ensuring the safety of aircraft flying in accordance with normal aviation practice, the Minister may prescribe prohibitions and restrictions for the use of land, airspace or water in the vicinity of airports, relating to -
 - (a) the erection of buildings, structures or other things in any area specified;
 - (b) the planting of, or the limitation of the height of, any trees in any area specified;
 - (c) the sowing or growing of any plant or crop in any area specified;
 - (d) the bringing of vessels or vehicles into any area specified, or the anchoring or mooring of any vessel or vehicle therein.
- (2) An owner or occupier of land who suffers loss or damage as a consequence of any prohibition or restriction prescribed under subsection (1) is eligible for compensation if he or she submits a claim within a prescribed period -
 - (a) to the Minister in respect of an airport owned by the State; or
 - (b) to the owner in the case of any other airport.
- (3) The loss or damage referred to in subsection (2) is assessed taking into account the circumstances in existence at the time the prohibition or restriction becomes applicable.
- (4) The maximum amount of compensation payable under subsection (2) may not exceed the amount by which the market value of such land is reduced as a result of such prohibition or restriction.
- (5) In the event of disagreement as to the amount of compensation which is payable in respect of a claim for compensation under subsection (2), the amount is fixed by a court of competent jurisdiction.

Part 3 – NAMIBIA CIVIL AVIATION AUTHORITY

8. Establishment of Namibia Civil Aviation Authority

- (1) There is established a juristic person to be known as the Namibia Civil Aviation Authority for which the abbreviation “NCAA” may be used.
- (2) The Authority -
 - (a) has jurisdiction throughout Namibia; and
 - (b) must act independently and impartially.

9. Objects of Authority

The objects of the Authority are to -

- (a) control and regulate and promote civil aviation safety and security;
- (b) oversee the implementation of, and compliance with, the national aviation security program;
- (c) oversee the functioning and development of the civil aviation industry in an efficient and economical manner with due regard given to the maintenance of standards in the civil aviation industry;
- (d) monitor and ensure compliance with this Act and the Chicago Convention and other international civil aviation agreements applicable to Namibia; and

- (e) perform its functions in the most efficient and effective manner to ensure the preservation of safety and security of civil aviation in a way that contributes to the aim of achieving an integrated, safe, responsive, and sustainable transportation system.

10. Functions and powers of Authority

- (1) The functions of the Authority are to conduct oversight of the safety and security of civil aviation in Namibia by -
 - (a) developing and promoting appropriate, clear and concise regulatory requirements, and technical aviation safety and security standards;
 - (b) developing effective enforcement strategies to ensure compliance with aviation safety and security standards;
 - (c) issuing aviation documents in terms this Act;
 - (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 provision and operation of navigational aids to aviation;
 - (f) conducting regular reviews of the systems of civil aviation safety and security 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 such systems;
 - (g) conducting regular and timely assessment of international safety and security developments;
 - (h) implementing, monitoring and enforcing the NCASP;
 - (i) reviewing and ensuring the adequacy of security programs and associated documentation produced by airports, air service operators and cargo operations, and monitoring their implementation to ensure continuing effectiveness and incorporation of amendments as required;
 - (j) enhancing aviation security through development and dissemination of progressive administrative and technical practices, and promoting their use by security services, airport administrations and air service operators;
 - (k) formulating and implementing a national aviation disaster management plan;
 - (l) encouraging a greater acceptance by the aviation industry of its obligation to maintain high standards of aviation safety and security, through -
 - (i) comprehensive safety and security education and training programs;
 - (ii) accurate and timely aviation safety and security advice; and
 - (iii) fostering an awareness in industry management, and generally within the community, of the importance of aviation safety and security and compliance with relevant legislation; and
 - (m) promoting communication with all interested parties on aviation safety and security.
- (2) In addition to the functions referred to in subsection (1) the other functions of the Authority are -
 - (a) to advise the Minister on matters associated with any action or condition which -
 - (i) is capable of causing any actual or potential threat of harm or damage to persons or property;

- (ii) the Minister refers to the Authority or requires from it; and
 - (iii) the Authority considers necessary in the furtherance of its objects;
 - (b) to act as the national competent authority in connection with matters related to the aviation transportation system;
 - (c) to recommend to the Minister -
 - (i) the preparation of new legislation or the amendment of existing legislation for the regulation of civil aviation safety and security;
 - (ii) in respect of the conclusion of any international agreement with other states, governments or international organisations;
 - (d) to establish and continue a service to be called the Air Navigation Service;
 - (e) to perform any other functions conferred on it by or under any other law;
 - (f) to implement any agreements and conventions to which Namibia is a party;
 - (g) to perform any other functions as prescribed;
 - (h) to promote the development of civil aviation safety and security capabilities, skills and services for the benefit of the Namibian people;
 - (i) to provide consultancy and management services relating to civil aviation oversight activities, within or outside Namibia;
 - (j) to maintain and preserve records and documents relating to activities within the civil aviation system, and in particular to maintain the Namibia Register of Aircraft and the Civil Aviation Registry;
 - (k) to provide to the Minister such information and advice as the Minister may from time to time require;
 - (l) to provide information and advice with respect to civil aviation, and to foster appropriate information and education programmes with respect to civil aviation that promote its objects;
 - (m) to perform any functions incidental to any of the functions specified in this section.
- (3) The Authority may perform its functions outside Namibia when it is necessary in order to achieve its objects under this Act.
- (4) The Authority must perform its functions in a manner consistent with -
- (a) the objects set out in [section 9](#); and
 - (b) the obligations of Namibia under any international aviation agreement and regional agreements affecting civil aviation.
- (5) Unless authorised by or under this Act or any other law, the Authority may not make any distinction against or among various -
- (a) participants or categories of participants in civil aviation; or
 - (b) users or categories of users of any air navigation facilities, air traffic service or air navigation service.
- (6) To enable it to perform its functions, the Authority may -
- (a) with the written consent of the Minister and the Minister responsible for finance, borrow moneys and secure the payment of moneys so borrowed in any manner including the mortgaging and pledging of property and in particular by means of the issue of any kind of promissory note or negotiable instrument or the like, with or without security;

- (b) acquire, hire and improve property required for the performance of the functions of the Authority and dispose of any such property, but the Authority may not acquire or dispose of immovable property without the prior written consent of the Minister, subject to such conditions as the Minister may impose;
 - (c) subject to the prior written consent of the Minister, form a company or any organisation or promote the formation of, or acquire a financial interest in a company or any organisation, or lend money to or enter into a guarantee for the benefit of, a company or any organisation;
 - (d) enter into any contract or otherwise arrange for the services of private persons, and private, public, or governmental organisations whether inside or outside Namibia;
 - (e) make or receive donations;
 - (f) collect, publish, and provide charts and aeronautical information, and enter into arrangements with any other person or organisation to collect, publish, and distribute such charts and information;
 - (g) co-operate with, or provide advice and assistance to, any government agency or regional or local government agency when requested to do so by the Minister, but only if the Minister and the Authority are satisfied that the performance of the functions of the Authority are not compromised; or
 - (h) enter into technical or operational arrangements, or both, with civil aviation authorities of other countries.
- (7) In the exercise and performance of its powers and functions under this Act, the Authority must -
- (a) have regard to any Government policy of general application relating to civil aviation; and
 - (b) comply with any directive given to it in writing by the Minister relating to any policy contemplated in paragraph (a).
- (8) The Minister may not give any directive under subsection (7) which requires the Authority in the performance of its functions in terms of this Act -
- (a) to do, or refrain from doing, a particular act; or
 - (b) to bring about a particular result,
- in respect of any particular person or persons.
- (9) Subject to this Act, the Authority, in the course of exercising and performing its powers and functions, must consider whether it could most efficiently and effectively exercise or perform certain powers or functions by means of -
- (a) its own operations; or
 - (b) delegation or contracting out its operations to appropriate persons selected after an appropriate competitive process.

11. Board of directors

For the purposes of developing and controlling the affairs of the Authority there is established a Board of directors of the Authority.

12. Constitution of Board

- (1) Subject to sections 14 and 15 of the Public Enterprises Governance Act, the Board consists of the following five members -
- (a) the Executive Director who is a member by virtue of his or her office; and

- (b) four members appointed by the Minister as follows -
 - (i) two persons who hold recognised qualifications relevant to the operation, management, security or regulation of civil aviation together with associated experience of not less than seven years in each case; and
 - (ii) two persons who hold recognised legal or financial management qualifications with associated experience of not less than seven years in each case.
- (2) The Minister must appoint two of the members of the Board as chairperson and deputy chairperson of the Board, respectively.
- (3) Subject to subsection (1), the Minister must, for each member of the Board, appoint a person as alternate member.
- (4) In the absence of a member from any meeting of the Board, the alternate member for such member attends the meeting in the place of such member.
- (5) The Minister, by notice in the Gazette, must announce the appointment of any member or alternate member of the Board, specifying the full name, date and period of appointment.

13. Term of office of members of Board

- (1) Unless a different determination has been made in terms of section 14(1)(d) of the Public Enterprises Governance Act and subject to [section 15](#), a member holds office for a term of four years, except for the chairperson whose term of office is five years.
- (2) A member of the Board, including the chairperson, may be reappointed after the expiry of the term of his or her office, but a member may not be appointed for more than three consecutive terms of office.

14. Disqualification for appointment as members or alternate members of Board

A person is not qualified for appointment as member or alternate member of the Board, if such person -

- (a) is not a Namibian citizen or a permanent resident in Namibia;
- (b) is not resident in Namibia;
- (c) is a member of Parliament, a regional or local authority council;
- (d) has been convicted of an offence, other than a political offence committed before the date of Independence of Namibia, in any country and sentenced to a term of imprisonment without the option of a fine;
- (e) has been removed from an office of trust on account of being dishonest;
- (f) has been declared as mentally ill under any law relating to mental health; or
- (g) is an unrehabilitated insolvent.

15. Vacation of office and filling of vacancies

- (1) An appointed member of the Board vacates his or her office, if the member -
 - (a) becomes disqualified in terms of [section 14](#);
 - (b) resigns his or her office by giving the Minister a written 30 days' notice of his or her intention to resign;
 - (c) has been absent from three consecutive meetings of the Board without leave of the Board; or
 - (d) is removed from office by the Minister under subsection (2).

- (2) Subject to section 14(1)(f) of the Public Enterprises Governance Act, the Minister, by notice in writing, may remove a member of the Board from office if the Minister, after giving the member a reasonable opportunity to be heard, is satisfied that the member -
 - (a) has failed to comply with [section 19](#);
 - (b) is guilty of neglect of duty, demonstrable incompetence or misconduct;
 - (c) is incapable of performing the functions of his or her office, by reason of physical or mental illness;
 - (d) without authorisation of the Board discloses any confidential information to a person not lawfully entitled to receive such information; or
 - (e) improperly acts on or uses information obtained as a result of his or her membership of the Board.
- (3) If the office of a member of the Board becomes vacant, the Minister must appoint a person as member of the Board for the unexpired portion of the term of office of the member who ceased to hold office.

16. Remuneration and allowances for members of Board and committees

A member or an alternate member of the Board, or member of a committee who is not in the full-time employment of the State or Authority is paid such remuneration or allowances or other benefits as the Minister, with the concurrence of the Minister responsible for finance, subject to section 22(1) of the Public Enterprises Governance Act, may determine.

17. Meetings of Board

- (1) The first meeting of the Board must be held at such time and place as the Minister may determine, and subsequent meetings of the Board may be held at such time and place as the Board or the chairperson may determine, but the Board must sit at least once in two months.
- (2) The chairperson -
 - (a) may at any time;
 - (b) must, at the written request of the Minister, or of the majority of the members, convene a special meeting of the Board.
- (3) The majority of the members constitute a quorum at a meeting of the Board.
- (4) The chairperson must cause to be given to each member a notice of not less than 14 days for any ordinary meeting of the Board.
- (5) A decision of a majority of the members present and voting at a meeting of the Board constitutes a decision of the Board, and in the event of an equality of votes the person presiding at such meeting has a casting vote in addition to his or her deliberative vote.
- (6) A decision of the Board or an act performed under the authority of the Board is not invalid only by reason of -
 - (a) a vacancy on the Board; or
 - (b) the fact that a person not entitled to sit as a member of the Board was in attendance when the decision was taken or act authorised,if the decision was taken or act authorised by a majority of the members who were present and entitled to vote at such meeting.

- (7) Subject to this Act, the Board may regulate the procedures to be followed at meetings of the Board and committees of the Board.
- (8) Subject to subsection (9), a meeting of the Board where a person -
 - (a) makes representations to the Board; or
 - (b) presents arguments on a question of law or fact to the Board as well as to any hearing before any organ of the Authority,is open to the public, but in the case of a meeting or part of a meeting where the members of the Board only deliberate among themselves may be open or closed to the public as the Board may decide.
- (9) The Board may decide to close the whole or part of any meeting or hearing that in terms of subsection (8) is open to the public, on the grounds that such meeting or part of a meeting relates to or discloses -
 - (a) matters that must be kept confidential in the interest of national security;
 - (b) matters relating to the internal personnel rules and practices of the Authority;
 - (c) trade secrets or commercial or financial information that is privileged or confidential; or
 - (d) information of a personal nature the disclosure of which would constitute an unwarranted invasion of privacy.
- (10) In determining whether to close a meeting to the public, the Board may require a person requesting such action to demonstrate the reasons why such meeting must be closed to the public at a meeting of the Board that is closed to the public.
- (11) The grounds for closing a meeting to the public must be recorded and such recording must state the provision of this section authorising such closing.
- (12) Despite subsection (5), a written resolution not passed at a meeting of the Board but signed by all the members of the Board at that time present in Namibia and sufficient to constitute a quorum -
 - (a) is as valid and effectual as if it had been passed at a meeting of the Board duly convened and constituted; and
 - (b) must be recorded in the minutes of the next ensuing meeting of the Board.

18. Minutes of meetings of Board

- (1) The Board must keep minutes of its meetings and submit copies of the minutes to its members within 14 days of the adoption of the minutes.
- (2) The minutes of any meeting of the Board, when signed by a person who presided at the particular meeting, are, in the absence of proof of error therein -
 - (a) regarded as a true and correct record of the proceedings; and
 - (b) a proof of those proceedings before a court of law, any tribunal or a commission of inquiry.

19. Conduct of members and disclosure of interests

- (1) A member of the Board may not -
 - (a) engage in an activity that undermines or has the potential of undermining the integrity of the Authority;
 - (b) participate in any investigation or decision concerning a matter in respect of which the member has a financial or other personal interest; or

- (c) use any confidential information obtained in the performance of his or her functions as a member to obtain, directly or indirectly, a financial or other advantage for himself or herself or any other person.
- (2) A member, as soon as practical after his or her appointment, must in writing disclose to the Minister and the Board any direct or indirect financial or other personal interest which the member has in any business carried on in Namibia or elsewhere.
- (3) A member or member of committee who has a direct or indirect interest in any matter -
 - (a) pending before the Board or committee; or
 - (b) which is likely to conflict with any matter that is regulated by the Authority,must, as soon as practicable, after the relevant facts have come to his or her knowledge, in writing, disclose to the Board or committee the nature of his or her interest at a meeting of the Board or committee.
- (4) The member or member of committee who has the interest to which the disclosure contemplated in subsection (3) relates -
 - (a) may not be present during the deliberations or decision on such matter by the Board or committee, or take part in the deliberations or decision on such matter by the Board or committee;
 - (b) must withdraw from any further deliberations or decision on such matter by the Board or committee, if he or she was present at a meeting;
 - (c) may, despite paragraph (a) and (b), remain in the meeting and participate in the deliberations on the subject matter in respect of which the declaration of interest was made, when the majority of the Board or committee, after assessing the interests so declared, determines that the member need not withdraw from the meeting.

20. Committees of Board

- (1) The Board may establish one or more committees to -
 - (a) advise the Board in the exercise of its powers and performance of its functions; or
 - (b) exercise or perform any power or function that the Board may delegate or assign to such committee.
- (2) A committee established under subsection (1) -
 - (a) must consist of at least one member and such other person or persons as the Board may determine;
 - (b) may, with the approval of the Board, co-opt persons of special expertise to advise it in the performance of its functions, but such co-opted person is not entitled to vote at any such meeting.
- (3) For each committee, the Board must designate a member of the Board as chairperson of the committee.

21. Corporate governance

- (1) For the purpose of ensuring good corporate governance and proper management and control of the affairs of the Authority, the Board must -
 - (a) formulate policies and strategies to enable the Authority to exercise and perform its powers and functions in a proper, efficient and effective manner;

- (b) ensure that the Authority complies with and gives effect to the approved performance standards;
 - (c) ensure that the Authority has adequate systems of internal controls, both operational and financial, and that it follows sound financial policies and procedures;
 - (d) formulate good and workable policies on human resources and labour relations, including the approval of remuneration and other conditions of services for all employees of the Authority; and
 - (e) diligently exercise and perform its powers and functions conferred and imposed upon the Board by or under this Act or any other law.
- (2) The Board must report to the Minister in accordance with this Act and in the manner agreed upon between the Minister and the Board.

22. Funds of Authority

- (1) The funds of the Authority consist of -
- (a) money appropriated by Parliament for the purposes of the Authority;
 - (b) fees, levies, charges and administrative fines paid to the Authority in terms of this Act or any other law;
 - (c) interest derived from the investment of the funds of the Authority;
 - (d) money received as loans or grants with the prior approval of the Minister with the concurrence of the Minister responsible for finance;
- [The word “concurrence” is misspelt in the Government Gazette, as reproduced above.]
- (e) money received as donations for the benefit of the Authority;
 - (f) revenue derived from commercial activities and other services of the Authority; and
 - (g) money from any other source of funds as may be approved by the Minister with the concurrence of the Minister responsible for finance.
- (2) All moneys, including moneys derived from administrative fines received under this Act for the benefit of the Authority are paid into the bank accounts contemplated in [section 26](#).
- (3) Subject to the control and oversight of the Board, the Executive Director is the accounting officer of the Authority and is responsible for -
- (a) all income and expenditure of the Authority; and
 - (b) all assets and the discharging of all liabilities of the Authority.

23. Transfer of assets, rights, liabilities and obligations to Authority

- (1) The Minister, as soon as possible after the commencement of this Act, must by notice in the Gazette, identify and vest in the Authority all assets, rights, liabilities and obligations that relate to the powers and functions that are exercised and performed by the Authority in terms of this Act or any other law.
- (2) After the publication of the notice referred to in subsection (1) -
- (a) the Registrar of Deeds; or

- (b) any person in charge of any other office where a register or a record is being kept of the ownership of or entitlement to an asset or right published in that notice,

must make such entries in or on any relevant register, title deed or other document in his or her office or submitted to him or her as may be necessary to effect the transfer thereof to the Authority.

24. Utilisation of funds of Authority

- (1) The Authority must utilise the funds available to it -
 - (a) in general, to defray the expenses of the Authority which are incurred in the exercise and performance of its powers and functions in terms of this Act or any other law; and
 - (b) to defray the administrative expenditure of the Authority.
- (2) Any moneys accruing to the Authority by virtue of -
 - (a) an appropriation by Parliament; or
 - (b) a grant or donation which has been made for a specific purpose,must be utilized only for that purpose and in accordance with such conditions as may attach to the appropriation or grant.
- (3) The Authority may not expend any moneys except in accordance with an approved financial plan prepared in accordance with [section 30](#).

25. Charges

- (1) For the purposes of this section the word “charge” means any fee, charge or levy prescribed under [section 62](#).
- (2) The Authority, by notice in the Gazette published at least 90 days before the commencement date, may impose charges, and specify the persons by and to whom, and the times when, such charges are payable.
- (3) A charge imposed under subsection (2) may not be amended for more than twice in any financial year.

26. Bank accounts of Authority

- (1) The Authority must open and maintain such bank accounts at one or more banking institutions in Namibia, registered in terms of the Banking Institutions Act, 1998 (Act [No. 2 of 1998](#)) as are necessary for the performance of the functions of the Authority.
- (2) The Board must ensure that -
 - (a) all money received by or on behalf of Authority is deposited into the appropriate bank account of the Authority as soon as practicable after being received;
 - (b) any payment by or on behalf of the Authority is made from the appropriate bank account of the Authority; and
 - (c) no money is withdrawn, paid or transferred from any bank account of the Authority without the authority of -
 - (i) the Executive Director; or
 - (ii) in the case of the Air Navigation Services, the head of the Services.
- (3) Payment instruments payable from or drawn on a bank account of the Authority, or any other form or document to be completed for the withdrawal, payment or transfer of money from any of the

bank accounts of the Authority are, if required, signed by two persons authorised for that purpose by the Board.

[subsection (3) substituted by section 5 of [Act 16 of 2022](#)]

27. Investment of money

The Board, with the concurrence of the Minister responsible for finance, and subject to section 27 of the Public Enterprises Governance Act, may invest any money that is not immediately required for expenditure by the Authority -

- (a) at a banking institution authorised to conduct banking business under the Banking Institutions Act, 1998 (Act [No. 2 of 1998](#)); or
- (b) at the Post Office Savings Bank controlled and managed by the Namibia Post Limited established by section 2(1)(a) of the Posts and Telecommunications Companies Establishment Act, 1992 (Act [No. 17 of 1992](#)).

28. Financial year and accounts and audit

- (1) The financial year of the Authority ends on 31 March in each year.
- (2) The Board must cause such records of account to be kept in accordance with generally accepted accounting practices, principles and procedures as are necessary -
 - (a) to represent fairly the state of affairs and business of the Authority; and
 - (b) to explain the transactions and financial position of the Authority.
- (3) Not later than three months after the end of each financial year of the Authority, the Executive Director must prepare and submit to the Board for approval, financial statements, comprising -
 - (a) a statement, with suitable and sufficient particulars, reflecting the income and expenditure of the Authority during the financial year; and
 - (b) a balance sheet showing the state of the assets, liabilities and financial position of the Authority as at the end of the financial year.
- (4) The accounting records and the financial statements of the Authority must be audited annually by independent auditors approved by the Board with the concurrence of the Auditor-General.

29. Annual report

- (1) No later than four months after the end of a financial year, the Executive Director must produce an annual report of the Authority for such financial year.
- (2) The annual report must contain -
 - (a) a full description of the actions taken by the Authority in such financial year in the exercise and performance of its powers and functions to achieve its objects;
 - (b) a balance sheet, an income statement and a cash-flow statement which is a true and correct reflection of the state of affairs of the Authority as at the end of such financial year; and
 - (c) a report by the auditor who audited the accounts of the Authority stating -
 - (i) whether the audited financial statements fairly represent the financial position, state of affairs and activities of the Authority and the results thereof; and
 - (ii) whether generally accepted accounting practice were followed.
- (3) The annual report must be submitted to the Board which may make such amendments to the report as it thinks fit.

- (4) The Board must approve the annual report within six months from the end of the financial year to which the report relates.
- (5) After the Board has approved the annual report, the Board must within 30 days submit it to the Minister.
- (6) The Minister must table the annual report within 14 days from the receipt thereof in the National Assembly, if it is then in ordinary session, or within 14 days from the commencement of the next ordinary session, if the Assembly is not in ordinary session.

30. Business and financial plan

- (1) At least three months before the commencement of a financial year, the Board must prepare and submit to the Minister a business and financial plan in accordance with this section.
- (2) The business and financial plan must encompass all the businesses and activities, including investments, of the Authority and its wholly-owned subsidiaries, if any, and must cover the ensuing financial year and each of the four financial years following thereafter.
- (3) The business and financial plan must set out how the Authority intends to give effect to the performance statement and contain particulars and, where appropriate, include an analysis, regarding -
 - (a) the estimated income accruing to the Authority;
 - (b) the estimated administrative and other expenditures of the Authority;
 - (c) any factors which may affect the implementation of the plan concerned and the measures to be taken to counter the effects of such factors; and
 - (d) such other matters as the Minister may require.
- (4) The business and financial plan must include -
 - (a) a statement of -
 - (i) the objects for which the Authority is established;
 - (ii) the objectives of the Authority for the next five years and for each year in that period and the strategy the Authority intends to employ to achieve them; and
 - (iii) the expected performance of the Authority for the next financial year as compared to its projected objectives for such year as set out in its preceding business and financial plan;
 - (b) the operating budget and the capital budget of the Authority for the next financial year, with a description of the nature and scope of the activities to be undertaken, including commercial strategies, pricing of services and personnel requirements;
 - (c) a statement with particulars of any expenditure included in the budget for any project to be funded from any subsidy or grant awarded to the Authority from whatever source for that purpose, the conditions attaching to the subsidy or grant and the control measures to be applied for monitoring such expenditure and the application of the funds received in respect of the subsidy or grant;
 - (d) a general indication of borrowing plans and strategies of the Authority to pay the debt, if the Authority intends to borrow money in the next financial year;
 - (e) a statement of the kind of information to be furnished to the Minister and the Board in respect of the Authority during the course of a financial year, including the information to be included in each annual report; and
 - (f) any other matters as the Minister and the Board may agree upon.

- (5) Subsequent to the finalization of a business and financial plan or any amendment thereof by the Board, the Board must submit such financial plan or amendment to the Minister to be dealt with in terms of section 19 of the Public Enterprises Governance Act.
- (6) The particulars which are included in an approved business and financial plan in respect of the ensuing financial year in accordance with subsection (3)(a) and (b) constitute the approved budget of the Authority for such financial year.
- (7) The Authority may during the course of a financial year amend its approved business and financial plan in order to accommodate a change in circumstances or any new considerations.
- (8) The Minister must provide a copy of an annual business and financial plan received in terms of subsection (1) to the Minister responsible for Public Enterprises for information, and comment, if any.
- (9) The Authority must act in accordance with its business and financial plan, unless it has first obtained the written approval of the Minister to do otherwise.
- (10) Nothing done by the Authority is void or unenforceable merely because it has failed to comply with subsection (9).
- (11) A person may not publish or disclose any information contained in a business and financial plan of the Authority, except -
 - (a) with the approval of the Board or of the Minister given after consultation with the Board;
 - (b) for the purpose of performing a function under this Act or any other law; or
 - (c) by order of a court of law or any other body in the proper administration of justice.
- (12) A person who contravenes subsection (11) commits an offence and is liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

31. Performance statement

- (1) Within two months after the commencement of this Act or such longer period as the Minister may determine, the Board, after consultation with such parties as the Minister may direct, must prepare and submit to the Minister a draft performance statement containing the following particulars -
 - (a) the nature and scope of functions to be performed by the Authority;
 - (b) the strategies which the Authority intends to employ in order to achieve its objectives;
 - (c) the performance targets and other measures by which the performance of the Authority relative to its objectives may be judged;
 - (d) a statement of accounting policies;
 - (e) for purposes of transparency, a plan on the consultation processes to be followed by the Authority;
 - (f) the principles to be followed by the Authority relating to the funding of the Authority, including -
 - (i) principles to be followed at the end of each financial year in respect of any surplus funds in the accounts of the Authority;
 - (ii) the parties to be consulted on the manner in which charges referred to in [section 25](#) are to be imposed;
 - (iii) the measures to be implemented to protect the financial soundness of the Authority;

- (iv) the principles to be applied by the Authority in relation to its policies regarding appointment and promotion of employees of the Authority;
 - (g) any activities for which compensation is sought from the Government;
 - (h) any other matter relating to the functions of the Authority that may be required by the Minister.
- (2) The Minister, as soon as practicable after the receipt of a performance statement from the Board, may approve the performance statement without amendments or with such amendments as may be effected with the consent of the Board.
- (3) The Board -
 - (a) may amend the approved performance statement from time to time, subject to the approval of the Minister; and
 - (b) must, at least once in three years, review the approved performance statement and submit it to the Minister for his or her approval.
- (4) The Authority must act only in accordance with its performance statement, unless it has first obtained the written approval of the Minister to do otherwise.
- (5) Failure by the Authority to comply with any provision of the performance statement does not affect the validity or enforceability of any agreement entered into, or any right, obligation or liability, acquired or incurred by the Authority.
- (6) A person may not publish or disclose any information contained in a performance statement of the Authority, except -
 - (a) with the approval of the Board or of the Minister given after consultation with the Board;
 - (b) for the purpose of performing a function under this Act or any other law; or
 - (c) by order of a court of law or any other body in the proper administration of justice.
- (7) A person who contravenes subsection (6) commits an offence and is liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

Part 4 – DELEGATION

32. Delegation and assignment of powers and functions by Minister and Board

- (1) The Minister may, either generally or particularly, in writing delegate or assign to the Board any power or function conferred or imposed on the Minister by or under this Act, except the power -
 - (a) to appoint any person;
 - (b) to make regulations; and
 - (c) to delegate and assign powers and functions, under this Act.
- (2) The Board, in writing and subject to such conditions as the Board may determine, may delegate or assign any of its powers or functions to the Executive Director, a committee of the Board, or any other competent person or body.
- (3) The Board may not delegate -
 - (a) a power to appoint the Executive Director or to appoint a person in an acting capacity of Executive Director for any period exceeding 30 days;
 - (b) a power delegated to it by the Minister without the written approval of the Minister;

- (c) a power in relation to business and financial plan and expenditure of the Authority;-or
- (d) a power to make rules, under this Act.
- (4) A delegation or assignment made under subsection (1) or (2) -
 - (a) does not divest Minister or the Board of the power or function so delegated or assigned;
 - (b) does not prevent the exercise of the power or the performance of the function by the Minister himself or herself or the Board itself; and
 - (c) may at any time be revoked in writing by the Minister or the Board,and the Minister or Board may, without prejudice of any right, amend or set aside any decision made under such delegation.

33. Delegation and assignment of powers and functions by Executive Director

- (1) The Executive Director, in writing and subject to such conditions as the Executive Director may determine, may delegate or assign in writing any power or function conferred or imposed on him or her by or under this Act to any employee of the Authority or any other person, including the powers and functions delegated and assigned to the Executive Director under this Act.
- (2) The Executive Director may not delegate -
 - (a) any power delegated to the Executive Director by the Board without the written approval of the Board;
 - (b) the power to make emergency regulations;
 - (c) the power to suspend or to revoke an aviation document under section [43](#) or [64](#); or
 - (d) the power to appoint or discharge employees of the Authority.
- (3) A delegation under this section may be made to -
 - (a) a specified employee or other person;
 - (b) the employees or other persons of a specified class; or
 - (c) a holder or holders of a specified office or specified class of office.
- (4) An employee of the Authority or other person purporting to act pursuant to any delegation under this section -
 - (a) is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation;
 - (b) must, when reasonably requested to do so, produce proof of his or her authority to so act.
- (5) A delegation or assignment made under this section -
 - (a) does not divest the Executive Director of the power or function so delegated or assigned;
 - (b) does not prevent the exercise of the power or the performance of the function by the Executive Director himself or herself;
 - (c) may at any time be revoked in writing by the Executive Director,and the Executive Director may, without prejudice of any right, amend or set aside any decision made under such delegation.
- (6) A delegation under this section, until it is revoked or expires -
 - (a) continues in force according to its tenor, despite the fact that the Executive Director by whom it was made ceases to hold office;

- (b) continues to have effect as if it was made by the Executive Director for the time being holding that office.

Part 5 – EXECUTIVE DIRECTOR AND STAFF OF AUTHORITY

34. Executive Director of Civil Aviation

- (1) The Board, with the concurrence of the Minister, must, in accordance with the eligibility requirements of [section 14](#) and subject to section 21 of the Public Enterprises Governance Act, appoint a suitable person -
 - (a) who has qualifications, knowledge and expertise directly relevant to the administration and functions of the Authority; and
 - (b) to be the Executive Director of Civil Aviation who is the chief executive officer of the Authority.
- (2) The Executive Director is appointed -
 - (a) for a term of five years, and is eligible for reappointment at the expiry of that term; and
 - (b) on such terms and conditions as the Board -
 - (i) with due regard to any directives laid down by the Council under section 4 of the Public Enterprises Governance Act; and
 - (ii) with the concurrence of the Minister,may determine.
- (3) Where the Executive Director is absent from office or when a vacancy for the post of the Executive Director occurs, the powers and functions of the Executive Director may be exercised and performed by -
 - (a) any suitable employee of the Authority other than the head of Air Navigation Services; or
 - (b) any other suitable person,appointed by the Board, and it does not matter whether the appointment has been made before or after the absence or vacancy occurred.
- (4) The Executive Director is in the full-time employment of the Authority and may not engage in any other occupation or employment, whether for remuneration or not, without the prior written approval of the Board.

35. Accountability of Executive Director

- (1) The Executive Director is the head of the administration and accounting officer of the Authority and manages the Authority.
- (2) In the exercise and performance of the powers and functions of the Authority under this Act, unless otherwise specified in this Act, the Executive Director is accountable solely and directly to the Board in respect of issues relating to -
 - (a) civil aviation safety and security oversight;
 - (b) the implementation of the governance policies as directed by the Board;
 - (c) the implementation of the decisions of the Board;
 - (d) the accounting of moneys received and payments made by the Authority;
 - (e) the administration and management of the Authority; and

- (f) the performance of the functions of the Authority.
- (3) The Executive Director must for every quarter in each year submit to the Board a quarterly report on his or her performance -
 - (a) in the execution of the functions of the Authority; and
 - (b) in the implementation of the decisions and governance policies of the Board, representing fairly the financial state of affairs and business of the Authority.

36. Administrative powers and functions of Executive Director

Apart from the powers and functions contained in other provisions of this Part, the Executive Director, subject to the directions of the Board, has administrative powers and functions -

- (a) to appoint and dismiss the staff of the Authority;
- (b) to organise, control and maintain staff discipline;
- (c) to form and develop an efficient and effective system of administration;
- (d) to establish and maintain a register of inspectors, authorised officers and authorised persons;
- (e) to effectively deploy and utilise staff to achieve maximum operational results;
- (f) to sign contracts with the approval of the Board; and
- (g) to submit to the Board for its approval, at least six months before the start of a financial year or another period agreed to between the Board and the Executive Director, the estimated revenue and expenditure for such financial year.

37. Designation of inspectors and authorised officers and persons

- (1) Without prejudice to his or her general powers of appointment and delegation in terms of this Act, the Executive Director may designate one or more -
 - (a) persons in the service of the Authority as inspectors or authorised officers;
 - (b) persons who are not in the service of the Authority as authorised persons.
- (2) The Executive Director must sign and issue to each authorised officer, inspector and authorised person designated 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 -
 - (a) such authorised officer, inspector or authorised person has been designated in terms of subsection (1); and
 - (b) such authorised officer, inspector or authorised person is empowered to exercise the powers entrusted to him or her in terms of this Act directly or entrusted to him or her in the exercise and performance of powers and functions of the Executive Director under delegation.
- (3) The Executive Director may, when necessary, 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).
- (4) The qualifications, requirements and remunerations for persons designated in terms of subsection (1) are as prescribed.

38. Powers and functions of Executive Director

- (1) The Executive Director generally -
 - (a) has powers conferred on the Executive Director by or under this Act, including powers delegated to the Executive Director under this Act;
 - (b) performs the functions imposed on or assigned to the Executive Director by or under this Act.
- (2) Without limiting subsection (1), the Executive Director must -
 - (a) exercise control over entry into the civil aviation system through -
 - (i) the granting of aviation documents, including the validation of foreign aviation documents;
 - (ii) the issue of medical certificates; or
 - (iii) the granting of recognition to foreign medical certificates;
 - (b) take such actions as may be appropriate in the public interest -
 - (i) to enforce this Act, including the carrying out of inspections and monitoring; and
 - (ii) to assist in the enforcement of other legislation that are directly related to aviation safety and security and where written approval or instruction for proposed action has been given by the Minister;
 - (c) monitor adherence, within the civil aviation system, to any regulatory requirements relating to -
 - (i) safety and security, including personal security;
 - (ii) access and mobility;
 - (iii) public health;
 - (iv) environmental sustainability;
 - (v) any other matter;
 - (d) ensure regular reviews of the civil aviation system to promote the improvement and development of its safety and security.
- (3) Without limiting subsection (1), where the Executive Director believes on reasonable grounds -
 - (a) that an unsafe condition exists in any aircraft or aeronautical product; and
 - (b) that a condition is likely to exist or develop in any other aircraft or aeronautical products of the same design,

the Executive Director, by notice in writing, may issue to the affected parties an airworthiness directive in respect of aircraft or aeronautical products of that design.
- (4) An airworthiness directive issued under subsection (3) comes into force on the date specified in the directive, which may be a date earlier than the date of publication of the directive in the Gazette under subsection (5), if the Executive Director -
 - (a) considers that urgent action is required; and
 - (b) notifies the affected parties before the directive comes into force.
- (5) The Executive Director must publish in the Gazette the airworthiness directive issued under subsection (3) not later than 28 days after the directive comes into force.

- (6) Without limiting subsection (1), the Executive Director may issue an aviation directive comprised of a permission, approval or procedure, or the imposition of a condition, restriction or prohibition which the Executive Director believes on reasonable grounds to be -
 - (a) consistent with the objectives of applicable regulatory requirements, procedures or documents; and
 - (b) necessary and expedient to better achieve the objects of this Act.
- (7) In exercising or performing any powers or functions in relation to -
 - (a) the granting of aviation documents;
 - (b) the suspension of aviation documents;
 - (c) the revocation of aviation documents;
 - (d) the issue, suspension, or revocation of medical certificates;
 - (e) the issue of a validation permit for a foreign license;
 - (f) the granting of recognition of a foreign medical assessment or certificate;
 - (g) the granting of exemptions; or
 - (h) the enforcement of this Act or any other law relating to aviation safety and security,the Executive Director acts independently and is not subject to any influence or directive from any person or authority.

39. Examinations and tests for granting of aviation documents

For the purposes of granting or renewing aviation documents under this Act, the Executive Director may -

- (a) set, conduct, and administer examinations and tests;
- (b) conduct flight testing;
- (c) carry out other functions in relation to such examinations, tests, and flight testing under this section as may be necessary.

40. Safety and security inspections and monitoring

- (1) The Executive Director may in writing require any person who -
 - (a) holds an aviation document; or
 - (b) operates, maintains, or services, or does any other act in respect of any aircraft, aeronautical product, aviation related service, air traffic service, or aeronautical procedure,to -
 - (i) undergo such inspections and such monitoring; or
 - (ii) carry out such inspections and such monitoring,as the Executive Director considers necessary in the interests of civil aviation safety and security.
- (2) The Executive Director may, in respect of any person described in subsection (1)(a) or (b), carry out such inspections and monitoring as the Executive Director considers necessary in the interests of civil aviation safety and security.
- (3) For purposes of any inspection or monitoring carried out in respect of any person under subsection (2), the Executive Director may in writing require from such person such information as the Executive Director considers relevant to the inspection or the monitoring.

41. Investigation of holder of aviation document

- (1) The Executive Director, in writing, may require a holder of an aviation document to undergo an investigation conducted by the Executive Director if he or she believes, on reasonable grounds, that it is necessary in the interests of civil aviation safety or security, and if the Executive Director has reasonable grounds to believe -
 - (a) that the holder has failed to comply with any conditions of an aviation document or with the requirements of [section 66](#); or
 - (b) that the privileges or duties for which the document has been granted are being utilised or carried out in a careless or incompetent manner.
- (2) If the Executive Director decided to investigate a holder of an aviation document, the Executive Director must -
 - (a) conclude the investigation as soon as practicable; and
 - (b) inform the holder, in writing, of -
 - (i) the date on which the investigation begins; and
 - (ii) the results of the investigation, including any recommendations arising out of the investigation and the grounds for those recommendations.

42. Suspension of aviation documents and imposition of conditions

- (1) Subject to [section 44](#), the Executive Director may suspend the whole or a part of an aviation document issued under this Act or impose conditions in respect of any such document, if he or she considers such action necessary in the interests of safety and security and to ensure compliance with this Act, and on reasonable grounds believes -
 - (a) that the holder has failed to comply with any conditions of the aviation document or with the requirements of [section 66](#);
 - (b) that the holder contravenes or fails to comply with [section 167](#); or
 - (c) that the privileges or duties for which the document has been granted are being utilised or carried out in a careless or incompetent manner.
- (2) A holder whose aviation document has been suspended or made subject to conditions under subsection (1) must forthwith produce such document to the Executive Director for appropriate endorsement.
- (3) A person in respect of whom a decision is taken under this section may appeal against the decision to the High Court under [section 225](#).

43. Revocation of aviation documents and imposition of conditions

- (1) Subject to [section 44](#), if after an inspection, monitoring, or investigation carried out under this Act, the Executive Director considers it necessary in the interests of aviation safety or security, he or she may -
 - (a) revoke the whole or any part of an aviation document; or
 - (b) impose permanent conditions on an aviation document.
- (2) A person whose aviation document is revoked or made subject to permanent conditions under this section must -
 - (a) if the document is made subject to permanent conditions or revoked in part, immediately produce the document to the Executive Director for appropriate endorsement; or

- (b) if the whole document is revoked, immediately surrender the document to the Executive Director.
- (3) A person in respect of whom a decision is taken under this section may appeal against the decision to the High Court under [section 225](#).

44. Criteria for suspension or revocation of or imposition of conditions on aviation documents

- (1) Before the Executive Director determines whether an aviation document should be suspended or made subject to conditions under [section 42](#) or revoked or made subject to conditions under [section 43](#), the Executive Director must consider the criteria set out in this section.
- (2) Where the question of suspension or revocation of or imposition of conditions on an aviation document of a person arises, the Executive Director may have regard to, and give such weight as the Executive Director considers appropriate to, the following matters -
 - (a) the history of compliance of such person with transport safety regulatory requirements;
 - (b) any conviction for any transport safety offence, whether or not -
 - (i) the conviction was in a Namibian court; or
 - (ii) the offence was committed before the commencement of this Act; or
 - (c) any evidence that the person has committed a transport safety offence or has contravened or failed to comply with any regulation made under this Act.
- (3) The Executive Director is not confined to consideration of the matters specified in subsection (2) and may take into account such other matters and evidence as he or she considers relevant.
- (4) The Executive Director may -
 - (a) seek and receive such information as the Executive Director thinks fit; or
 - (b) consider information obtained from any source.
- (5) If the Executive Director proposes to take into account any information that is or may be prejudicial to a person, the Executive Director must, subject to subsection (6) -
 - (a) in the case of revocation of an aviation document, as soon as practicable; or
 - (b) in the case of the suspension of an aviation document or the imposition of conditions under [section 42](#), no later than five working days after suspending the aviation document or imposing conditions,disclose the information to the person and give the person a reasonable opportunity to refute or comment on the information.
- (6) Nothing in subsection (5) requires the Executive Director to disclose -
 - (a) any information, the disclosure of which would endanger the safety of any person; or
 - (b) any information or the fact of non-disclosure of the information, before suspending an aviation document or imposing conditions in respect of an aviation document under [section 42](#).

45. Amendment or revocation of aviation documents by request

- (1) The Executive Director may, if so requested in writing by the holder of any aviation document, amend the document in the manner requested or revoke the document.

- (2) Subject to subsection (3), the Executive Director, after having received and considered a request submitted under subsection (1), may do any of the following -
 - (a) amend an aviation document to reflect the fact that any privilege or duty for which the document has been granted is no longer being enjoyed or carried out, or is no longer able to be enjoyed or carried out, by the holder;
 - (b) revoke any aviation document if none of the privileges or duties for which the document has been granted are being enjoyed or carried out, or are able to be enjoyed or carried out, by the holder; or
 - (c) amend any aviation document to correct any clerical error or obvious mistake on the face of the document.
- (3) Before taking any action under subsection (2), the Executive Director must -
 - (a) notify the holder in writing of the proposed action; and
 - (b) give the holder a reasonable opportunity to comment or make submissions on the proposed action.
- (4) The power to amend an aviation document under this section, includes -
 - (a) the power to revoke the document and issue a new document in its place; and
 - (b) the power to impose reasonable conditions.
- (5) When the holder of an aviation document is notified that specified action is proposed under this section, the holder must forthwith produce the document to the Executive Director.

46. Exemption from certain requirements under certain regulations

- (1) The Executive Director, if he or she considers it appropriate and upon such conditions as he or she considers appropriate, may exempt any person, aircraft, aeronautical product, aerodrome, or aviation related service from any specified requirement in any regulation made under section [54](#), [56](#), [57](#) or [58](#).
- (2) Before granting an exemption under subsection (1), the Executive Director must be satisfied in the circumstances of each case that -
 - (a) the requirement has been substantially complied with and that further compliance is unnecessary;
 - (b) the action taken or provision made in respect of the matter to which the requirement relates is as effective or more effective than actual compliance with the requirement;
 - (c) the prescribed requirements are clearly unreasonable or inappropriate in the particular case; or
 - (d) events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case,and that the risk to safety is not likely to be significantly increased by the granting of the exemption.
- (3) The Executive Director must, as soon as practicable by notice in the Gazette, announce the exemption granted under subsection (1).
- (4) Nothing in this section applies in any case where a regulation made under the sections referred to in subsection (1) specifically prohibits the granting of an exemption.

47. Detention of aircraft, imposition of prohibitions and conditions and seizure of aeronautical products and dangerous goods

- (1) Where the Executive Director believes on reasonable grounds that the operation or use of any aircraft or aeronautical product or any class of aircraft or aeronautical products or any aerodrome may endanger persons or property and that prompt action is necessary to prevent the danger, the Executive Director may -
 - (a) detain the aircraft or any aircraft of that class in order to prevent their operation or use;
 - (b) seize a particular aeronautical product or any aeronautical products of that class where necessary in order to prevent their operation or use;
 - (c) prohibit or impose conditions on the operation of the aircraft or aircraft of that class or the use of any aeronautical product or any aeronautical products of that class; or
 - (d) prohibit or impose conditions on the operation of the aerodrome.
- (2) Any detention or seizure under subsection (1) is maintained for only such time as is necessary in the interest of safety, but, if an aircraft, aeronautical products, or parts thereof are required for the purpose of evidence in any prosecution under this Act such aircraft, products, or parts thereof may be retained by the Executive Director for such period as the Executive Director considers necessary for that purpose.
- (3) The Executive Director, if requested by the owner or the person for the time being of an aircraft detained or an aeronautical product seized under subsection (1), must provide in writing to the owner or such person the reasons for the detention or seizure.
- (4) The Executive Director may seize and detain any dangerous goods where he or she believes on reasonable grounds that they may not be lawfully carried in an aircraft but which are offered for carriage by air for the purpose of -
 - (a) preventing the carriage by air of such dangerous goods;
 - (b) use as evidence in any prosecution under this Act or any other law; or
 - (c) the safe disposal of such dangerous goods, if authorised by this Act or any other law.
- (5) Any seizure or detention under subsection (4) may be maintained only for such time as is necessary to achieve the relevant purpose or purposes in subsection (4).
- (6) A person in respect of whom a decision is taken under this section may appeal against the decision to the High Court under [section 225](#).

48. Right of access to aircrafts, aerodromes, buildings and places

For the purposes of exercising and performing his or her powers and functions under this Act, a person duly authorised by the Executive Director has access at any time to -

- (a) any aircraft, aerodrome, building, or place;
- (b) any document or record concerning any aircraft, aeronautical product, or aviation related service; and
- (c) any other place, document or thing as may be prescribed.

Part 6 – AIR NAVIGATION SERVICES

49. Establishment of Air Navigation Services

- (1) There is established in the Authority a unit to be known as Air Navigation Services.

- (2) The Board must appoint a suitable person as head of Air Navigation Services for such period and on such conditions of service as determined by the Board.
- (3) Where the office of the head is vacant or the head is for any reason absent from office, the Board may appoint any staff member of the Authority, other than the Executive Director, to act as head during the vacancy or the absence of the head from office.
- (4) The head referred to in subsection (2) must report to -
 - (a) the Board on the provision of air navigation services; and
 - (b) the Executive Director on matters relating to regulatory compliance.
- (5) The Authority performs its functions in respect of the air navigation services separately from its other functions and for this purpose must -
 - (a) develop, implement and maintain separate bank accounts, records, and reports;
 - (b) establish rules of procedures for the regulation and provision of services;
 - (c) establish efficient and effective lines of management and operational authority to enable the application of policies and procedures;
 - (d) ensure control and set-up funding mechanisms;
 - (e) appoint the auditor for the annual auditing of the finances for Air Navigation Services; and
 - (f) ensure other reporting lines, financial structures and accountability mechanisms,with the objective of maximising the functional separation of the provision of air navigation services from the other functions of the Authority.
- (6) The rules, procedures and mechanisms adopted under subsection (5) must be in accordance with internationally accepted accounting practice.

Part 7 – REGISTRIES, RECORDATION OF INTERESTS AND INFORMATION SERVICES

50. Namibia Register of Aircraft

- (1) The Executive Director must establish a register to be known as the Namibia Register of Aircraft.
- (2) The Executive Director must enter in the Namibia Register of Aircraft such particulars, as may be prescribed, of every aircraft registered under [section 70\(1\)](#).

51. Recordation of interests in aircraft

- (1) The Executive Director must establish a national system for recording documents which affect the title to or any interest in -
 - (a) any civil aircraft registered in Namibia; and
 - (b) any aircraft engine, propeller, appliance, or spare part intended for use on any aircraft registered in Namibia.
- (2) Upon the Executive Director establishing a recording system, no document affecting title to or any interest in such registered aircraft, aircraft engines, propellers, appliances, or spare parts is valid, except between the parties thereto, unless it is recorded in that system.
- (3) The validity of any document so recorded, unless otherwise specified by the parties thereto, is determined under the laws of Namibia.
- (4) The requirements for documents to be recorded and the manner of recordation are prescribed by the Executive Director.

52. Civil Aviation Registry

- (1) The Executive Director must establish a registry to be known as the Civil Aviation Registry.
- (2) Copies or appropriate proof of the following documents and information are recorded and maintained at the Civil Aviation Registry -
 - (a) all aviation documents;
 - (b) the Namibia Register of Aircraft;
 - (c) all regulations and all notices published in the Gazette under this Act and for the time being in force;
 - (d) any material incorporated into a regulation by reference under [section 61](#);
 - (e) all accidents and incidents notification given under [section 90](#);
 - (f) all airworthiness directives issued by the Executive Director under [section 38\(3\)](#);
 - (g) all aviation directives issued by the Executive Director under [section 38\(6\)](#);
 - (h) all delegations, authorisations, and exemptions made or granted in writing under this Act;
 - (i) the address for service of every current applicant for an aviation document and of every current aviation document holder;
 - (j) all information published under [section 53](#); and
 - (k) all document of recordation of title or interest pursuant to [section 51](#).
- (3) The Executive Director must take such measures as are necessary to ensure that the public has access to documents described in subsection (2) and kept at the Civil Aviation Registry.
- (4) The Executive Director must make the documents and information described in subsection (2) available during the business hours of the Authority -
 - (a) for inspection by the public free of charge; and
 - (b) for copying upon payment of such fee as the Authority may determine.
- (5) The Executive Director may exclude any information relating to documents kept at the Civil Aviation Registry, if the disclosure of such information may -
 - (a) prejudice the safety and security of civil aviation; or
 - (b) risk the national interest of Namibia.

53. Information services

The Authority must ensure that -

- (a) an information service is provided comprising the collection and dissemination of aeronautical information and instructions relating to the safety, security, regularity, and efficiency of air navigation; and
- (b) such information and instructions referred to in paragraph (a) are readily available to any person upon payment of a fee determined by the Authority.

Part 8 – REGULATIONS

54. General regulations

- (1) The Minister, after consultation with the Board, may make regulations relating to -
 - (a) the implementation of the obligations of Namibia under the Chicago Convention and the Transit Agreement;
 - (b) the provision of aviation meteorological services, civil aviation security programs and services and the coordination of aviation search and rescue services;
 - (c) the fees, levies and charges payable under this Act;
 - (d) the protection and promotion of public health;
 - (e) the environmental sustainability;
 - (f) any matter related or reasonably incidental to any of the following -
 - (i) the functions of the Minister in terms of sections [4](#) and [125](#);
 - (ii) the objects of the Authority under [section 9](#);
 - (iii) the functions of the Authority in terms of [section 10](#); or
 - (iv) the functions of the Executive Director under sections [36](#) and [38](#); and
 - (g) any matter required or permitted by this Act to be prescribed or necessary or expedient to be prescribed to give effect to this Act.
- (2) A regulation made under subsection (1) may -
 - (a) apply generally or with respect to different classes of persons, aircraft, aerodromes, aeronautical products, aeronautical procedures, or aviation related services, or with respect to the same class of person, aircraft, aerodrome, aeronautical product, aeronautical procedure, or aviation related service in different circumstances;
 - (b) apply generally throughout Namibia or within any specified part or parts of Namibia; or
 - (c) prescribe -
 - (i) administrative fines in respect of a contravention of or a failure to comply with any provision thereof; or
 - (ii) penalties in respect of a contravention of or a failure to comply with any provision thereof not exceeding a fine of N\$20 000 or imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

55. Regulations relating to safety and security

Without limiting the power conferred by [section 54](#), in the interests of safety or security within the civil aviation system, the Minister, after consultation with the Board, may make regulations relating to -

- (a) the use of aerodromes and other aviation related facilities, including -
 - (i) the identification procedures for persons, aircraft, and any other aviation related things;
 - (ii) the prevention of interference with aerodromes and other aviation related facilities;
 - (iii) the ongoing review, update and implementation of security measures for the protection of all users of aircraft and aerodromes;
 - (iv) the functions, powers, and duties of aviation security services providers;

- (v) the screening and searching of passengers, baggage and cargo and the seizure of items and substances;
- (b) general operation, air traffic and flight, including -
 - (i) the conditions under which aircraft may be used or operated, or conditions under which any act may be performed in or from an aircraft;
 - (ii) the prevention of aircraft from endangering persons or property;
- (c) the control of things likely to be hazardous to aviation safety and security, including -
 - (i) the safe carriage of firearms and other dangerous or hazardous goods or substances by air;
 - (ii) the construction, use, or operation of anything likely to be hazardous to aviation safety; and
 - (iii) the misconduct of passengers on board aircraft.

56. Regulations relating to airspace

Without limiting the power conferred by [section 54](#) -

- (a) in the interests of safety or security within the civil aviation system;
- (b) in the interests of national security; or
- (c) for any other reason in the public interest,

the Minister, after consultation with the Board, may make regulations providing for the classification, designation, special use, prohibition, and the restriction of airspace and things affecting navigable airspace.

57. Regulations for noise abatement and emission control purposes

Without limiting the power conferred by [section 54](#), the Minister, after consultation with the Board, may make regulations relating to -

- (a) flight rules, flight paths, altitude restrictions, and operating procedures for the purposes of noise abatement in the vicinity of aerodromes;
- (b) limitation of engine emissions consequential upon the operation of aircraft.

58. Regulations relating to general matters

Without limiting the power conferred by [section 54](#), the Minister, after consultation with the Board, may make regulations relating to -

- (a) the designation, classification, and certification of -
 - (i) aircraft;
 - (ii) aircraft pilots;
 - (iii) flight crew members;
 - (iv) air traffic service personnel;
 - (v) aviation security service personnel;
 - (vi) aircraft maintenance personnel;
 - (vii) air services;
 - (viii) air traffic services;

- (ix) aerodromes and aerodrome operators;
 - (x) regulated cargo agents;
 - (xi) navigation installation providers;
 - (xii) aviation training organisations;
 - (xii) aircraft design, manufacture, and maintenance organisations;
 - (xiv) aeronautical procedures;
 - (xv) aviation security services;
 - (xvi) aviation meteorological services;
 - (xvii) aviation communications services;
 - (xviii) aviation search and rescue services;
 - (xix) any other person who provides services in the civil aviation system, and any aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system, or classes of such persons, aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system;
- (b) the standards, specifications, restrictions, and licensing requirements for all or any of those persons or things specified in paragraph (a), including -
- (i) the privileges, limitations, and ratings associated with licences or other forms of approval;
 - (ii) the standards for training systems and techniques, including recurrent training requirements;
 - (iii) the medical standards for personnel;
 - (iv) the requirement for proof of access to appropriate weather services;
 - (v) the standards of design, construction, manufacture, maintenance, processing, testing, supply, approval, and identification of aircraft and aeronautical products;
 - (vi) the requirements for notification of insurance coverage for air services;
 - (vii) the format of aviation documents, forms, and applications, including the specification of information required on all application forms for aviation documents;
 - (viii) the provision of information to the Executive Director by applicants for or holders of aviation documents;
- (c) the conditions of operation of foreign aircraft and international flights to, from, or within Namibia;
- (d) the definitions, abbreviations, and units of measurement to apply within the civil aviation system; and
- (e) the design and colours of the Civil Air Ensign of Namibia, and where and by whom it may be flown.

59. Emergency regulations

- (1) Subject to subsection (2), the Executive Director may make such emergency regulations in accordance with [section 60](#) as may be necessary to alleviate or minimise -
- (a) any risk of death of or a serious injury to any person; or
 - (b) any risk of damage to any property.

- (2) The emergency regulations under subsection (1) are made when -
 - (a) there is no regulation in place dealing with the particular situation; and
 - (b) it is impracticable in the circumstances of the particular case for the Minister to make regulations to effectively alleviate or minimise the risk concerned.
- (3) The Executive Director may revoke any emergency regulation made under subsection (1), and the revocation is notified in the same manner as emergency regulation.

60. Procedure for making emergency regulations

- (1) Before making an emergency regulation under [section 59](#), the Executive Director must consult with such persons, representative groups within the aviation industry or elsewhere, Government entities, and others as the Executive Director in each case considers appropriate.
- (2) Where for reasons of safety or security it is impracticable or inappropriate to notify an emergency regulation in the Gazette, the Executive Director must notify such persons as he or she considers appropriate or necessary in the circumstances by e-mail, facsimile, telephone, or such other manner as the Executive Director considers appropriate or necessary in the circumstances.
- (3) An emergency regulation may be in force for a period not exceeding 90 days, and the Executive Director may renew such regulation once for a further period not exceeding 90 days.
- (4) The Board may, at any time while an emergency regulation made by the Executive Director is in force in accordance with subsection (3), by notice in the Gazette, extend the regulation in accordance with subsection (5) for a further period not exceeding 180 days from the date of its publication in the Gazette.
- (5) Before extending an emergency regulation under subsection (4), the Board must consult with such persons, representative groups within the aviation industry or elsewhere, Government entities, and others as the Board thinks appropriate.
- (6) So far as any emergency regulation is inconsistent or repugnant to any regulation made under this Act, the emergency regulation prevails.

61. Incorporation into regulations by reference

- (1) The -
 - (a) Minister, after consultation with the Board; or
 - (b) Executive Director,may, respectively, incorporate by reference into a regulation made by the Minister, or into emergency regulation made by the Executive Director, any -
 - (i) standards, requirements, or recommended practices of international aviation organisations;
 - (ii) standards, requirements, or regulations prescribed by any other Contracting State of ICAO;
 - (iii) standards, requirements, or regulations of any aviation sport or aviation recreational organisation; or
 - (iv) any other written material or document that, in the opinion of the Minister or Executive Director, is too large or impractical to be printed as part of the regulation.
- (2) A material incorporated in a regulation by reference under subsection (1) -
 - (a) is deemed for all purposes to form part of the regulation or emergency regulation; and
 - (b) unless otherwise provided in the regulation or emergency regulation, every amendment to any material so incorporated by reference that is made by the person or organisation from

whom the material originated, the amendment, subject to subsections (3) and (4), is deemed to be part of the regulation or emergency regulation.

- (3) The Minister or Executive Director, by notice in the Gazette, must specify the date on which any amendment to material incorporated by reference under subsection (1) takes effect.
- (4) The Civil Aviation Registry must make all the materials incorporated by reference under subsection (1) or (2) available for inspection by the public in accordance with [sections 52](#)(4) and (5).
- (5) Where any material specified in subsection (1) is incorporated by reference into a regulation or emergency regulation pursuant to this section the regulation or emergency regulation must -
 - (a) include a statement to the effect that the material has been incorporated pursuant to this section;
 - (b) clearly identify the material so incorporated; and
 - (c) advise that the incorporated material is available for inspection in accordance with subsection (4).

Part 9 – FEES, CHARGES AND LEVIES

62. Fees, charges and levies

- (1) The Minister, on the recommendation of the Board, and with the concurrence of the Minister responsible for finance, may make regulations relating to -
 - (a) the fees, charges and levies payable under this Act;
 - (b) the matters in respect of which fees, charges or levies are to be payable under this Act, the amount of the fees, charges or levies, and the persons liable to pay them;
 - (c) the dates by which fees, charges or levies are payable;
 - (d) discounts for early payment of fees, charges or levies or a penalty for late payment, or both, on an equal basis to persons liable to pay the fee, charge or levy;
 - (e) the refund or waiver of any fee, charge or levy payable under this section in whole or in part, in any specified case or class of cases;
 - (f) such other matters as are contemplated by this Act or necessary for giving full effect to this Act and for its due administration.
- (2) Different rates of fees, charges and levies may be prescribed in respect of different classes of persons, aerodromes, aircraft, aeronautical products, aviation related services, air traffic services, or aeronautical procedures, or on the basis of different times of use, or on any other differential basis.
- (3) A regulation made under this section may -
 - (a) specify the persons by whom and to whom any fees, charges or levies are payable;
 - (b) prescribe additional fees, allowances, charges or rates for work or services carried out outside normal working hours or at weekends or on statutory holidays;
 - (c) prescribe rates for reimbursement of traveling time, accommodation, and other daily expenses;
 - (d) require returns to be made by persons by whom any fees or charges are payable, and prescribe conditions relating to the making of such returns; or
 - (e) provide for the refund or waiver of any fee or charge in whole or in part, in any specified case or class of cases.

- (4) The Minister may after consultation with the Namibian Airports Company prescribe fees, charges and levies in respect of the use of any aerodrome or airport operated or managed by such airport company.

63. Rebates

- (1) Subject to subsection (2), a Government institution, an organisation or a person to whom any fees, charges or levies are payable under any regulation may grant a rebate of such fees, charges or levies to any person who is liable to pay such fees, charges or levies.
- (2) A rebate of fees, charges or levies granted under subsection (1) is -
 - (a) based on the quantity of services used by the person liable to pay the fees, charges or levies;
 - (b) offered on an equal percentage basis to every person using a similar quantity of such services; and
 - (c) granted in accordance with the prescribed requirements.

64. Payment of fees, charges and levies

- (1) Unless otherwise provided in a regulation, every application made under this Act must be accompanied by the payment of all relevant prescribed fees, charges or levies.
- (2) Where a fee, charge or levy payable under this Act is not paid by the date prescribed for payment of such fee, charge or levy, the Executive Director may suspend the aviation document to which the unpaid fee, charge or levy relates.
- (3) Where any fee, charge or levy payable under this Act is not paid 60 days after the date prescribed for payment of such fee, charge or levy, the Executive Director may revoke the aviation document to which the fee, charge or levy relates.
- (4) Before suspending an aviation document under subsection (2), or revoking an aviation document under subsection (3), the Executive Director must notify the holder of the document of -
 - (a) his or her intention to suspend or revoke the document; and
 - (b) the right of appeal available to the holder of the document in the event of the document being suspended or revoked.
- (5) Where a fee, charge or levy is payable in respect of an application or the provision of a service under this Act, the Executive Director or other person asked to process the application or provide the service, may, unless the safety of any person would be put at risk, decline to process the application or provide the service until -
 - (a) the appropriate fee, charge or levy has been paid; or
 - (b) arrangements for payment of the fee, charge or levy acceptable to the Executive Director or such other person have been made.
- (6) A holder of an aviation document that is suspended under subsection (2) or revoked under subsection (3) may appeal against the decision of the Executive Director to the High Court under [section 225](#).

65. Recovery of fees, charges, levies and administrative fines

- (1) Without limiting the powers contained in subsections (2), (3) and (5) of [section 64](#), the Executive Director may recover any fee, charge, levy or administrative fine that is not paid to the Authority by the due date as a debt due to the Authority.

- (2) Subject to subsection (3), where a fee, charge, levy or administrative fine is payable under this Act in respect of any aircraft, the person whose name appears on the register of aircraft in respect of such aircraft is deemed to be liable to pay such fee, charge, levy or fine.
- (3) Any person who would otherwise be liable to pay a fee, charge, levy or administrative fine in relation to any aircraft in terms of subsection (2) is not so liable if the person -
 - (a) proves that during any relevant period of use of the aircraft the person was not entitled, whether alone or together with some other person, to possession of the aircraft or that another person was unlawfully in possession of it; and
 - (b) has taken all reasonable steps to provide the Executive Director with such information as would identify the actual user.

Part 10 – NAMIBIA CIVIL AVIATION SYSTEM

66. General requirements for participants in Namibia civil aviation system

- (1) A person who -
 - (a) performs any function or activity;
 - (b) occupies any position or office;
 - (c) provides any service or product; or
 - (d) does any other anything,for which an aviation document is required (in this section called a “participant”) must ensure that he or she holds the appropriate aviation documents and all the necessary qualifications and other required documents.
- (2) A participant must -
 - (a) comply with this Act and the conditions attached to the relevant aviation documents; and
 - (b) ensure that the activities or functions for which the aviation document has been granted are carried out safely and in accordance with the relevant prescribed safety standards and practices.
- (3) A participant who holds an aviation document that authorises the provision of a service within the civil aviation system must -
 - (a) if so required by or under this Act, establish and follow a management system that ensures compliance with the relevant prescribed safety standards and the conditions attached to the document;
 - (b) provide training and supervision to all employees of the participant who are engaged in doing anything to which the document relates, so as to maintain compliance with the relevant prescribed safety standards and the conditions attached to the document and to promote safety; and
 - (c) provide sufficient resources to ensure compliance with the relevant prescribed safety standards and the conditions attached to the document.

67. Requirement for aviation document

- (1) A regulation made under this Act may require that an aviation document is required by or in respect of -
 - (a) a Namibian aircraft;

- (b) aircraft pilots;
 - (c) flight crew members;
 - (d) air traffic service personnel;
 - (e) aviation security service personnel;
 - (f) aircraft maintenance personnel;
 - (g) air services;
 - (h) air traffic services;
 - (i) aerodromes and aerodrome operators;
 - (j) navigation installation providers;
 - (k) aviation training organisations;
 - (l) aircraft design, manufacture, and maintenance organisations;
 - (m) aeronautical procedures;
 - (n) aviation security services;
 - (o) aviation meteorological services;
 - (p) aviation communications services;
 - (q) any persons, services, or things within any of the classes specified in paragraphs (a) to (p);
 - (r) such other persons, aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system, or classes of such persons, aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system, as may, in the interests of safety or security, be prescribed; or
 - (s) any person who is an aviation examiner or medical examiner.
- (2) The requirements, standards, forms and application procedure for an aviation document, the maximum period for which an aviation document may be issued and the procedures to be followed where there is an adverse decision to an application for the granting or renewal of an aviation document are as prescribed.
- (3) Subject to this Act, Executive Director may issue an aviation document for such specified period and subject to such conditions as the Executive Director considers appropriate in each particular case.

68. Application for and grant of aviation document

- (1) An application for the grant or renewal of an aviation document is made to the Executive Director in the prescribed form.
- (2) After considering an application for the grant or renewal of an aviation document, the Executive Director must, as soon as is practicable, grant the application if he or she is satisfied that -
- (a) all things in respect of which the document is sought meet the relevant prescribed requirements; and
 - (b) the applicant or any person who is to have or is likely to have control over the exercise of the privileges under the document -
 - (i) either holds the relevant prescribed qualifications and experience or holds such foreign qualifications as are acceptable to the Executive Director under subsection (3);
 - (ii) is a fit and proper person to have such control or hold the document; and

- (iii) meets all other relevant prescribed requirements; and
- (c) it is not contrary to the interests of aviation safety for the document to be granted or renewed.
- (3) For the purpose of granting or renewing an aviation document, the Executive Director may, subject to the rules, accept such foreign qualifications or recognise such foreign certifications as he or she considers appropriate in each case.
- (4) It is a condition of every aviation document that the holder or any person who has or is likely to have control over the exercise of the privileges under the document continues to satisfy the fit and proper person test specified in subsection (2) (b)(ii).
- (5) Where the Executive Director declines to grant an application for the grant or renewal of an aviation document under this section, the applicant may appeal against the decision to the High Court under [section 225](#).

69. Criteria for fit and proper person test

- (1) For the purpose of determining whether or not a person is a fit and proper person for any purpose under this Act, the Executive Director, having regard to the degree and nature of the proposed involvement of the person in the Namibia civil aviation system, must have regard and give such weight as the Executive Director considers appropriate to -
 - (a) the compliance history of the person with transport safety regulatory requirements;
 - (b) the related experience, if any, of the person within the transport industry;
 - (c) the knowledge of the person in the applicable civil aviation system regulatory requirements;
 - (d) any history of any physical or mental health problem, disability or incapacity or of any serious behavioural problem of the person;
 - (e) any conviction of the person for any transport safety offence, whether or not -
 - (i) the conviction was in a court in Namibia; or
 - (ii) the offence was committed before the commencement of this Act; and
 - (f) any evidence that the person has committed a transport safety offence or has contravened or failed to comply with any transport safety regulation.
- (2) The Executive Director is not confined to consideration of the matters specified in subsection (1) and may take into account such other matters and evidence as may be relevant.
- (3) For the purpose of determining whether or not a person is a fit and proper person for any purpose under this Act, the Executive Director may -
 - (a) seek and receive such information, including medical reports, as the Executive Director thinks fit;
 - (b) consider information obtained from any source; or
 - (c) have regard to, and give such weight as the Executive Director thinks appropriate to, any advice and recommendations provided by approved organizations contracted under [section 4\(1\)\(c\)](#).
- (4) Subsection (1) applies to a juristic person with the following modifications -
 - (a) paragraphs (a), (b), (c), (e), and (f) of that subsection are read as if they refer to the juristic person and its officers; and
 - (b) paragraph (d) of that subsection is read as if it refers only to the officers of the juristic person.

- (5) If the Executive Director proposes to take into account any information that is or may be prejudicial to a person, the Executive Director, subject to subsection (6), must disclose that information to the person and give the person a reasonable opportunity to refute or comment on it.
- (6) Nothing in subsection (5) may require the Executive Director to disclose any information the disclosure of which would be likely to endanger the safety of any person.
- (7) If the Executive Director proposes to make a determination that any holder of or applicant for an aviation document is not a fit and proper person, the Executive Director, subject to subsection (6), must -
 - (a) disclose the grounds for the proposed determination to the holder or applicant; and
 - (b) give the holder or applicant a reasonable opportunity to make submissions on the proposed decision before proceeding to make a final determination.
- (8) If the Executive Director makes a final determination that the holder of or applicant for an aviation document is not a fit and proper person for the purposes of this Act, the Executive Director must -
 - (a) inform the holder or applicant of the decision; and
 - (b) notify the holder or applicant of a right of appeal against the decision to the High Court under [section 225](#).

70. Registration of aircraft

- (1) Unless as otherwise provided in this Act, an owner of an aircraft which flies to, from, within, or over Namibian territory must register the aircraft and hold a valid certificate of registration for the aircraft issued by -
 - (a) the Executive Director;
 - (b) the appropriate aeronautical authorities of a contracting State of ICAO; or
 - (c) the appropriate aeronautical authorities of another State that is party to an agreement with the Government of Namibia which provides for the acceptance of registration of aircrafts of each other.
- (2) An aircraft may not be registered in or remain registered in Namibia if it is registered in any other country.
- (3) The Executive Director may decline to register an aircraft if it does not meet the requirements prescribed by or under this Act.
- (4) Any person in respect of whom a decision is taken under this section may appeal against the decision to the High Court under [section 225](#).

71. Powers and functions of pilot-in-command and operator

- (1) A pilot-in-command of an aircraft -
 - (a) must ensure the safe operation of the aircraft in flight, the safety and wellbeing of all passengers and crew, and the safety of cargo carried;
 - (b) has final authority to control the aircraft while in command and for the maintenance of discipline in respect of all persons on board; and
 - (c) subject to subsections (2) to (7), must comply with all relevant requirements of this Act.
- (2) Subject to subsections (3) and (7), in an emergency that arises in flight, the pilot-in-command may act contrary to the provisions of this Act.

- (3) For the purposes of subsection (2), any act contrary to any prescribed requirement is permitted only if the pilot-in-command is satisfied that -
 - (a) the emergency involves a danger to life or property;
 - (b) the extent of any act contrary to the prescribed requirement goes only as far as is necessary to deal with the emergency;
 - (c) there is no other reasonable means of alleviating, avoiding, or assisting with the emergency; and
 - (d) the degree of danger involved in complying with the prescribed requirement is clearly greater than the degree of danger involved in deviating from it.
- (4) Subject to subsections (5) to (7), where an emergency, not being an emergency that arises in flight, necessitates the urgent transportation of persons or medical or other supplies for the protection of life or property, the pilot-in-command of the aircraft or the operator of the aircraft may act contrary to this Act.
- (5) For the purposes of subsection (4), any act contrary to any prescribed requirement is permitted only if -
 - (a) the emergency involves a danger to life or property;
 - (b) the extent of the act contrary to the prescribed requirement goes only as far as is necessary to deal with the emergency;
 - (c) there is no other reasonable means of alleviating, avoiding, or assisting with the emergency; and
 - (d) the degree of danger involved in deviating from the prescribed requirement is clearly less than the degree of risk in failing to attend to the emergency.
- (6) Nothing in subsection (4) permits -
 - (a) the operation of an aircraft that is not registered in Namibia or elsewhere;
 - (b) the breach of any prescribed requirement as to the airworthiness of an aircraft; or
 - (c) the operation of an aircraft by a person who is not lawfully entitled to operate such aircraft.
- (7) Where, in any emergency described in this section, a pilot-in-command or an operator who, under this section, has acted contrary to any prescribed requirement of this Act, the pilot-in-command or the operator must -
 - (a) immediately, after the emergency has abated, notify the relevant air traffic control service of the action; and
 - (b) as soon as practicable, and at the latest within three days of the action, notify the Executive Director of the action and the circumstances that necessitated it, and, if requested by the Executive Director, provide the Executive Director with a written report in respect of the action.

Part 11 – AIRCRAFT ACCIDENT AND INCIDENT INVESTIGATIONS

72. Application of this Part to accidents and incidents

- (1) This Part applies in respect of accidents and incidents in or over -
 - (a) Namibia;
 - (b) any place that is under Namibia air traffic control; and

- (c) any other place, if -
 - (i) Namibia is requested to investigate the accident or incident by an appropriate authority in terms of the Chicago Convention; or
 - (ii) the accident or incident involves an aircraft in respect of which, or that is operated by a person to whom, a Namibian aviation document has been issued.
- (2) The application of this Part in respect of accident or incident referred to in [section 76\(4\)](#) is subject to such restrictions in the interests of national security as are provided in the Defence Act, 2002 (Act [No. 1 of 2002](#)) or as prescribed under this Act.
- (3) In this Part “Government entity” means any ministry, office or agency, regional council or local authority, a Public enterprise or similar institution wholly or partially owned or controlled by the Government and operated within the local, regional or national sphere of Government.

73. Establishment of Directorate of Aircraft Accident and Incident Investigations

- (1) Subject to the Public Service Act, there is established in the Ministry a directorate to be known as the Directorate of Aircraft Accident and Incident Investigations.
- (2) The Minister, subject to such terms and conditions as he or she may think appropriate, must designate from the Public Service -
 - (a) staff members to the Directorate; and
 - (b) a suitably qualified and experienced staff member as Director of Investigations, to perform the functions of -
 - (i) investigations of accidents and incidents within the scope of [section 72](#);
 - (ii) reducing the risk of accidents and incidents;
 - (iii) advising the Minister on any matter relating to the reduction of risk of accidents or incidents; and
 - (iv) any other nature as provided for by or under this Act.
- (3) The persons designated in terms of this section are answerable and report directly to the Minister.
- (4) The Director of Investigations may designate persons as investigators and provide them with certificates of designation as investigators, who, subject to his or her control, must investigate accidents and incidents.
- (5) Except where the Director of Investigations personally acts as investigator in charge he or she must appoint one of the investigators designated under subsection (4) to be the investigator-in-charge.

74. Powers of Directorate

- (1) The Directorate may do all that is necessary or expedient to perform its functions effectively which includes the power to -
 - (a) obtain, by agreement, the services of any person, including any organ of State, for the performance of any specific act or function;
 - (b) make rules for the internal procedure for the investigation of accidents and incidents by the Directorate;
 - (c) delegate the investigation of any accident and incident to any other Contracting State, in accordance with Annex 13 to the Chicago Convention;
 - (d) collect and disseminate relevant information;

- (e) reopen any investigation in compliance with Annex 13 to the Chicago Convention;
 - (f) establish an accident and incident reporting system in compliance with Annex 13 to the Chicago Convention to facilitate the collection of information on actual or potential safety deficiencies;
 - (g) upon request conduct investigations on behalf of other contracting States;
 - (h) perform legal acts, including acts in association with or on behalf of any other person or organ of State;
 - (i) institute or defend any legal action; and
 - (j) do anything that is incidental to the exercise of any of its powers.
- (2) If the accident occurred within Namibia, the Directorate may -
- (a) summon and examine witnesses under oath and call for the production of books, logs, certificates, licences, medical records and other documents, and inspect them; 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 functions of the Directorate.

75. Functions of Directorate

- (1) In advancing the aviation transportation safety, the Directorate has the functions to -
- (a) develop, either generally or in relation to specific classes of accidents and incidents, policies to be followed in the conduct of investigations, and to make available to the public any policies so developed;
 - (b) conduct independent investigations, including, when necessary, public inquiries into selected accidents and incidents in order to make findings as to their causes and contributing factors;
 - (c) identify safety deficiencies as evidenced by accidents and incidents;
 - (d) make recommendations designed to eliminate or reduce any safety deficiencies;
 - (e) report on its investigations and on the findings in relation thereto;
 - (f) promote compliance with the provisions and procedures of Annex 13 to the Chicago Convention;
 - (g) investigate accidents and incidents in compliance with the provisions and procedures of Annex 13 to the Chicago Convention;
 - (h) 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;
 - (i) 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 Directorate;
 - (j) submit to the Minister within 90 days after completion of an investigation a final report on its findings;
 - (k) submit a final report to all recipient States in compliance with Chapter 6 of Annex 13 to the Chicago Convention concerning any accident or incident investigated by the Directorate;
 - (l) monitor the implementation of safety recommendations as issued by Contracting States;
 - (m) make such other recommendations as it considers appropriate; and

- (n) perform other functions and discharge all obligations in compliance with the provisions and procedures of Annex 13 to the Chicago Convention.
- (2) The objective of accident and incident investigations conducted by the Directorate is -
 - (a) accident prevention by making its findings as to the causes and contributing factors of accidents and incidents; and
 - (b) not to assign fault or determine civil or criminal liability, but the Directorate may not refrain from fully reporting on the causes and contributing factors merely because fault or liability might be inferred from the findings of the Directorate.
- (3) No finding of the Directorate may be construed as assigning fault or determining civil or criminal liability.
- (4) The findings of or the evidence before the Directorate -
 - (a) are not binding on the parties to any legal, disciplinary or any other proceedings; and
 - (b) may not be used in any civil, criminal or disciplinary proceedings against persons giving such evidence.
- (5) Where the causes and contributing factors of any accident or incident is known to the Directorate it may limit its investigation of such accident or incident accordingly.

76. Jurisdiction of Directorate

- (1) Despite any other law to the contrary, the Directorate must investigate any accident and incident in compliance with Annex 13 to the Chicago Convention.
- (2) Despite any other law to the contrary, the Directorate may commence an investigation into an accident or incident relating to civil aircraft for the purpose of making findings as to its causes and contributing factors.
- (3) The Directorate, with the concurrence of the Minister responsible for defence, may investigate an accident or incident that involves -
 - (a) a military conveyance and a civil aircraft;
 - (b) a military conveyance and a civil aviation facility; or
 - (c) a military aviation facility and a civil aircraft.
- (4) The Directorate, with the concurrence of the Minister responsible for safety and security, may investigate an accident or incident relating to aircraft or facility operated by the Namibian Police Force or Namibia Central Intelligence Service.

77. Coordination of investigations and remedial actions

- (1) Where, at any time during an investigation into an accident or incident under this Act, a Government entity -
 - (a) investigates such accident or incident; or
 - (b) undertakes remedial measures with respect to such accident or incident,the Directorate and the Government entity concerned must take all reasonable measures to ensure that their activities with respect to such accident or incident are coordinated.
- (2) Where conflicting interests arise between the Directorate and a Government entity in coordinating their activities pursuant to subsection (1), the requirements and interests of the Directorate, subject to subsection (3) and any agreement entered into under [section 81](#), take precedence and are paramount to the extent of the conflict.

- (3) Nothing in subsection (2) gives the requirements and interests of the Directorate precedence over those of the Namibian Police Force, or prevents a Government entity from taking emergency remedial measures under any other law.
- (4) Where an accident or incident referred to in subsection (1) is being investigated by the Directorate and -
 - (a) the Namibian Defence Force;
 - (b) the Namibian Police Force;
 - (c) Namibia Central Intelligence Service; or
 - (d) a visiting force,the Directorate and the Minister responsible for the Government entity concerned must take all reasonable measures to ensure that the investigations are coordinated.

78. Compatible procedures and practices of investigations

- (1) The Directorate must take all reasonable measures including, where appropriate, entering into agreements to ensure that the investigation procedures and practices that it follows in relation to accidents and incidents are compatible with -
 - (a) any international agreements or conventions to which Namibia is a party; and
 - (b) investigation procedures and practices followed by judicial inquests in terms of the Inquests Act, 1993 (Act [No. 6 of 1993](#)).
- (2) Despite subsection (1), but subject to [section 88](#), the internal proceedings and the investigation of accidents and incidents conducted by the Directorate are not open to the public.

79. Confidentiality and disclosure of interests

- (1) A person employed by the Directorate must preserve confidentiality with regard to any confidential information that may come to his or her knowledge in the exercise or performance of his or her powers or functions, and may not directly or indirectly disclose such information to another person, except -
 - (a) for the purpose of the exercise or performance of his or her powers or functions in terms of this Act; or
 - (b) when required to do so by a court of law or by or under any law.
- (2) An employee of the Directorate may not, directly or indirectly, engage in any aviation undertaking or business as owner, shareholder, director, officer, agent or partner, unless the interest is disclosed in writing to the Minister and approval is granted in writing.
- (3) An employee of the Directorate or accredited representative, expert or adviser of the Directorate -
 - (a) must disclose his or her direct or indirect financial interest in any civil aviation activity or industry and that of his or her spouse, parent, child, sibling or business associate;
 - (b) may not hold such interest referred to in paragraph (a) without prior written approval of the Minister, which approval is open to inspection by the public at the office of the Directorate during business hours.
- (4) During the term of employment an employee of the Directorate -
 - (a) may not carry on any activity inconsistent with the performance of his or her functions under this Act; and

- (b) must recuse himself or herself from participation in any investigation where there may reasonably be, or appear to be, a conflict of interest having the potential to compromise either the investigation itself or public confidence in the Directorate.

80. Retention of specialized expertise

The Directorate, in the exercise of its powers and the performance of its functions in terms of this Act or any other law, may enter into contracts for the purpose of obtaining the services of persons having technical or specialised knowledge in civil aviation or any other related field.

81. Agreements between Directorate and Authority

- (1) The Directorate and the Authority may enter into agreements with regard to the secondment of staff of the Authority to the Directorate for the purpose of rendering -
 - (a) any assistance during any investigation of any accident and incident; and
 - (b) any other matter relating or incidental to the investigation of accidents and incidents.
- (2) When entering into the agreements contemplated in subsection (1) the parties must avoid a conflict of interest.
- (3) The Directorate must make all efforts to enter into agreements with Ministers responsible for Government entities -
 - (a) providing for the coordination of activities between the Directorate and Government entities with respect to accidents and incidents, including investigation procedures and practices and requirements for reporting accidents and incidents; and
 - (b) providing for procedures to be followed in the event that conflicting interests arise between the Directorate and a Government entity during their activities with regard to accidents and incidents.

82. Independence and impartiality of Directorate

- (1) The staff and accredited representatives, experts and advisers of the Directorate must serve impartially and independently and exercise and perform their powers and functions in good faith and without fear, favour or prejudice, subject to this Act, the Chicago Convention and any other law.
- (2) A staff member, accredited representatives, experts and advisers of the Directorate 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 or performing his or her powers or functions in a fair, unbiased and proper manner.
- (3) If the Directorate becomes aware of a failure to disclose an interest contemplated in subsection (2) by any staff member, accredited representative, expert or adviser of the Directorate, the Directorate may take such steps as it considers necessary to ensure a fair, unbiased and proper investigation.

83. Powers of Director of Investigations regarding investigations

Subject to this Act and the policies developed under [section 75\(1\)\(a\)](#), the Director of Investigations has exclusive authority to direct the conduct of investigations on behalf of the Directorate under this Act in relation to accidents and incidents.

84. Designation and powers and functions of investigators

- (1) The Director of Investigations may designate an investigator in charge and any number of investigators to investigate any accident and incident in Namibia and provide reports.

- (2) An investigator designated in terms of subsection (1) has unrestricted access to and control over -
 - (a) an aircraft which has been involved in an accident and incident, the wreck or wreckage, the place where the aircraft, the wreck or wreckage is located and the places where marks resulting from the accident and incident which may be of assistance in an investigation, are located;
 - (b) 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; and
 - (c) all relevant evidence, including flight recorders and air traffic service recordings.
- (3) An investigator designated in terms of subsection (1) may -
 - (a) preserve an aircraft which has been involved in an accident or incident or the wreck or wreckage, any remains and any marks resulting from the accident or incident which may be of assistance in the investigation, by any means available, including photographic means;
 - (b) examine an aircraft involved in an accident or incident, the wreck or wreckage, any part or component thereof or any item transported therein or any marks resulting from the accident or incident which may be of assistance in the investigation, or remove any such aircraft, wreck or wreckage, or any part or component thereof or any item transported therein for the purpose of the investigation;
 - (c) obtain information and take statements, from any person, which may be necessary for the investigation;
 - (d) 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;
 - (e) summon any person to give evidence before him or her, or to produce any official document or such other information or object as may be necessary for the performance of the functions of the Directorate; or
 - (f) regulate, prohibit and control any access to the accident scene or the accident scene of any accident or incident.
- (4) An investigator who is investigating an accident or incident may, where the investigator believes on reasonable grounds that -
 - (a) a person is in possession of information relevant to the investigation -
 - (i) by notice in writing signed by the investigator, require the person to provide information to the investigator or to attend before the investigator and give a statement under oath or solemn affirmation if required by the investigator; and
 - (ii) make such copies of or take such extracts from the information provided under subparagraph (i) as the investigator considers necessary for the purposes of the investigation;
 - (b) the medical examination of a person who is directly or indirectly involved in the operation of an aircraft is 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) a physician or other health practitioner has information concerning a patient that is relevant to the 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 such information to the investigator; or

- (d) 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 -
 - (i) cause such an autopsy or medical examination to be performed; and
 - (ii) 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.
- (5) The requirement under subsection (4) that a person submit to a medical examination may 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.
- (6) Where an investigator has required a person to do something under subsection (4)(a), (b), (c) or (d) and the person refuses to do so, 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 -
 - (a) take such steps for the punishment of the person as if the person has been guilty of contempt of court; or
 - (b) may make such other order as it finds appropriate.
- (7) A person may not refuse or fail -
 - (a) to produce information to an investigator;
 - (b) to attend before an investigator and give a statement in accordance with subsection (4)(a);
 - (c) to provide information in accordance with subsection (4)(c); or
 - (d) 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 subsection (4)(d).
- (8) A person may not refuse or fail to submit to a medical examination in accordance with subsection (4)(b), but information obtained pursuant to such an examination is privileged subject to the power of the Directorate to make use of it as it considers necessary in the interests of aviation safety.
- (9) 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.

85. Search and seizure by investigators

- (1) In the exercises and performance of his or her powers and functions referred to in [section 84](#), an investigator may without a warrant search any premises or property and seize any property or item, including medical records, recorders and air traffic service recordings of an accident or incident -
 - (a) if the person concerned consents to the search for and the seizure of the property or item, including medical records, recorders and air traffic service recordings of an accident or incident in question;
 - (b) if the person who may consent to the search of the premises consents to such search and the seizure of the property or item, including medical records, recorders and air traffic service recordings of an accident articles in question; or
 - (c) if the investigator on reasonable grounds believes that -
 - (i) a search warrant will be issued to him or her if he or she applies for such warrant; and
 - (ii) the delay in obtaining a search warrant would defeat the object of the search.

- (2) An investigator may use the powers under 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.

86. Power to test items seized

- (1) Where any item is seized by an investigator under [section 85](#), 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;
 - (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
 - (c) subject to the need to conduct such tests, must cause the item to be preserved pending its return in accordance with [section 88](#).
- (2) Nothing in this section is taken -
- (a) to imply that an item seized pursuant to subsection (1) may not be an aircraft or any part thereof; or
 - (b) to authorise the exercise of a power by an investigator in circumstances where the exercise of that power would be inconsistent with the objective of the investigation.

87. Certificate to be produced

Before acting under sections [85](#) or [86](#) an investigator must, on request, produce his or her certificate of designation as investigator issued in terms of [section 73](#)(4) to any person in relation to whom the investigation is being conducted.

88. Return of seized item or property

- (1) Any item or property seized pursuant to [section 85](#), except on- board recordings as defined in [section 99](#), must, unless -
- (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 the owner, person, or the person from whom it was seized, as soon as possible after it has served the purpose for which it was seized.
- (2) A person from whom any item, except on-board recordings as defined in [section 99](#), was seized pursuant to [section 85](#), 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.
- (3) Where, on an application under subsection (2), the court is satisfied that the seized item -
- (a) has served the purpose for which it was seized;
 - (b) should be returned to the applicant in the interests of justice,
- 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 Directorate under this Act.

- (4) This section does not apply in respect of any item seized and tested to destruction in accordance with [section 86](#).

89. Public inquiry

- (1) Where, in the course of an investigation of an accident or incident, the Directorate considers it necessary that a public inquiry into the accident or incident be conducted, the Director of Investigations may designate a person or persons, who may be, or may include, the Director of Investigations -
 - (a) to conduct a public inquiry into the accident or incident; and
 - (b) to report to the Directorate thereon.
- (2) A person designated to conduct a public inquiry under this section may exercise the powers of a person designated as investigator under [section 84](#), subject to any restrictions specified in the designation.

90. Notification of all accidents and incidents

- (1) A pilot-in-command of an aircraft that is involved in an accident or incident must notify the Directorate as soon as possible thereof.
- (2) The Directorate must submit any notification received under subsection (1) forthwith to the Executive Director and the Namibian Police Force.
- (3) A person who operates, maintains, or services, or does any other act in respect of an aircraft, aeronautical product, or aviation related service and the aircraft is involved in an accident or incident must notify the accident or incident to the Directorate in the prescribed manner.
- (4) A co-ordinator of any search and rescue operation for any aircraft must notify the Director of Investigations of the operation as soon as practicable.
- (5) The Director of Investigations, on being notified under any of subsections (1) to (4), may request such additional information, in such form as is considered appropriate in each specific case, and the pilot-in-command, operator, or other person to whom the request is made must provide the additional information forthwith.
- (6) The Director of Investigations must as soon as possible provide the Minister with particulars of every notification received under this section relating to -
 - (a) an accident; or
 - (b) a serious incident.

91. Notification by Government entity of accident or incident and plans to conduct investigation or take remedial measures

- (1) Where a Government entity is notified of an accident or incident in which it has a direct interest and which the Directorate has the power to investigate under this Act, the entity must forthwith -
 - (a) provide the Director of Investigations with particulars of the accident or incident;
 - (b) after complying with paragraph (a), advise the Director of Investigations of any internal investigation that the entity plans to conduct and of any remedial measures that the entity plans to take;
 - (c) on completion of the internal investigation, supply a copy of its report to the Director of Investigations.

- (2) An investigator authorised by the Director Investigations may attend as an observer at an investigation conducted by an entity referred to in subsection (1) or during the taking of remedial measures by the department or body following an accident or incident.
- (3) Subject to any other law, a Government entity referred to in subsection (1) must provide the Director of Investigations with an interim and final reports prepared in respect of an investigation conducted in terms of subsection (1)(b), and the Director of Investigations may review and comment on such reports.

92. Notification of persons and bodies with direct interest in accidents or incidents

Where the Director of Investigations is notified of an accident or incident, he or she must forthwith -

- (a) provide particulars of the accident or incident to the Executive Director and where appropriate to a Minister responsible for a Government entity having a direct interest in the accident or incident; and
- (b) after complying with paragraph (a), advise the Minister referred to in paragraph (a) of any investigation that the Directorate plans to conduct and the scope of the investigation.

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

- (1) Subject to any conditions that the Director of Investigations may impose, a person may attend as an observer at an investigation of an accident or incident conducted by the Directorate, if the person -
 - (a) is designated as an observer by the Minister responsible for a Government entity having a direct interest in the subject matter of the investigation;
 - (b) has an observer status or is an accredited representative or adviser to the representative, pursuant to an international agreement or convention relating to transportation to which Namibia is a party; or
 - (c) is invited by the Director of Investigations to attend as an observer because, in the opinion of the Director of Investigations, the person has a direct interest in the subject matter of the investigation and may contribute to achieving the objects of the Directorate.
- (2) The Director of Investigations may remove an observer from an investigation if -
 - (a) the observer contravenes any condition imposed by the Director of Investigations on the presence of the observer; or
 - (b) in the opinion of the Director Investigations, the observer has a conflict of interest that impedes the conduct of the investigation.

94. Rights of affected parties, making representations and publication of report

- (1) On completion of any investigation, the Directorate must prepare and make available to the public a report on its findings, including -
 - (a) the safety deficiencies that it has identified; and
 - (b) the recommendations that it considers appropriate in the interests of aviation safety.
- (2) Before making public a report under subsection (1), the Directorate must -
 - (a) send a copy of the draft report on its findings and any safety deficiencies that it has identified to each Government entity and any other person who, in the opinion of the Director of Investigations, has a direct interest in the findings of the Directorate; and

- (b) give the Government entity or interested person contemplated in paragraph (a) a reasonable opportunity to make representations to the Directorate with regard to the draft report before the final report is prepared.
- (3) The period for submission of any representations may not be less than 60 days.
- (4) A person may not communicate or use the draft report or permit its communication or use for any purpose, other than for the taking of remedial measures or for the purpose of facilitating the study and the preparation of representations concerning the draft report.
- (5) The Directorate must provide an interim report on the progress and findings of an investigation -
 - (a) on written request made in respect of the investigation, to any Minister responsible for a Government entity having a direct interest in the subject matter of the investigation; and
 - (b) to any magistrate conducting an inquest into the accident or incident, where the accident or incident involved a fatality and significant progress has been made in the investigation by the Directorate.
- (6) A person, other than a Minister of a Government entity, who is provided with an interim report under subsection (5) may not use the report or permit its use for any purpose not strictly necessary to the examination of the report.
- (7) The Directorate 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.

95. Manner of dealing with representations

- (1) The Directorate must -
 - (a) receive representations made to it pursuant to [section 94](#) in the prescribed manner.
 - (b) keep 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 Directorate has disposed of the representations of such persons.
- (2) A representation is privileged, except where -
 - (a) it is a representation made by a Minister responsible for a Government entity having a direct interest in the findings of the Directorate; or
 - (b) there is a written authorisation from the author of the representation.
- (3) A person may not knowingly communicate any privileged representation or permit it to be communicated to any other person, except for the purposes of this Act.
- (4) The Directorate may make use of or act upon any representation to the extent that it considers such use or action necessary in the interests of aviation safety.
- (5) Where a judicial inquest instituted in terms of the Inquests Act to inquire into any circumstances in respect of which representations have been made to the Directorate, the Directorate of Investigations, if requested to do so by a magistrate under the Inquests Act must make such representations available to such inquest.
- (6) A person may not use any representations made to the Directorate under this section in any criminal, civil, disciplinary or other proceedings, except for the purposes of an investigation by a judicial inquest in terms of the Inquests Act.

96. Notification of findings and recommendations

The Directorate must forthwith -

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

97. Response on findings and recommendations

- (1) A minister responsible for a Government entity who is notified of the findings and recommendations of the Directorate under [section 96](#)(a) or (b) must, within 90 days after being so notified -
 - (a) advise the Directorate 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 Directorate if no action is to be taken or if the action to be taken differs from the action that was recommended.
- (2) Where the Directorate is satisfied that a minister responsible for a Government entity is unable to respond to the Directorate within the period referred to in subsection (1), the Directorate may extend the period as it may consider necessary, but such extension may not exceed 90 days.

98. Delegation and assignment of powers and functions by Directorate

- (1) The Directorate may delegate to any person, subject to any limitations specified in the instrument of delegation, any of the powers conferred or functions imposed on the Directorate under this Act, other than the power -
 - (a) to delegate under this subsection;
 - (b) to make rules; and
 - (c) to make recommendations.
- (2) The Directorate may, at any time in writing, withdraw a delegation or assignment made under this section.

99. Definition of “on-board recording”

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

100. Privilege for on-board recordings

An on-board recording is privileged and, except as provided in this Part, a person, including a person to whom access is provided under this Part, may not -

- (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.

101. Access to and use of on-board recordings by Directorate

- (1) Despite [section 100](#), any on-board recording that relates to an accident or incident being investigated under this Act must be released to an investigator who requests it for the purposes of the investigation.
 - (2) The Directorate -
 - (a) may use any on-board recording obtained under this Act as it considers necessary in the interests of aviation safety;
 - (b) may not knowingly communicate or permit to be communicated to anyone any portion thereof that is not related to -
 - (i) the causes or contributing factors of the accident or incident under investigation; or
 - (ii) to the identification of safety deficiencies,
- except to a magistrate conducting an inquest or any person referred to in [section 102](#).

102. Access to on-board recording by inquests and other investigators

The Directorate must make available any on-board recording obtained under this Act to -

- (a) a magistrate conducting an inquest who requests access thereto for the purpose of the inquest that the magistrate is conducting; or
- (b) any person carrying out a coordinated investigation under [section 77](#).

103. Power of court or inquest

Despite any provision of this Part to the contrary, where, in any proceedings before -

- (a) a court or a judicial inquest in terms of the Inquests Act; or
- (b) a person or persons appointed or designated to conduct a public inquiry into an accident or 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, or such person or persons, must -

- (i) cause notice of the request to be given to the Directorate, if the Directorate is not a party to the proceedings;
- (ii) in camera, examine the on-board recording and give the Directorate a reasonable opportunity to make representations with regard thereto; and
- (iii) if the court or the 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 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 the judicial inquest considers appropriate, and may require any person to give evidence that relates to the on-board recording.

104. Use of on-board recording prohibited

An on-board recording may not be used in disciplinary proceedings, proceedings relating to the capacity or competence of an officer or employee to perform his or her functions, or in legal or other proceedings, against -

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

105. Communication record

- (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 -
 - (a) air traffic controllers;
 - (b) aircraft crew members;
 - (c) airport vehicle operators;
 - (d) flight service station specialists; and
 - (e) persons who relay messages in respect of air traffic control or related matters.
- (2) A communication record obtained under this Act may not be used against any person referred to in [section 104](#) in any legal or disciplinary proceedings.

106. Statement privileged

- (1) For the purposes of this Part -
 - (a) “statement” means -
 - (i) the whole or any part of an oral, written or recorded statement relating to an accident or incident and given, by the author of the statement, to the Directorate, an investigator or any person acting for the Directorate of Investigations or for an investigator;
 - (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
 - (b) where a statement is privileged, the identity of its author is privileged to the same extent.
- (2) A statement is privileged, and a person, including any person to whom access is provided under this Part, may not knowingly communicate it or permit it to be communicated to any person, except as provided by this Act or to the extent authorised in writing by the person who made the statement.

107. Access to statements by judicial inquest and other investigators

The Directorate, upon request for access to the statements, must make the statements available to -

- (a) a judicial inquest for the purpose of the inquest that the magistrate is conducting; or

- (b) any person carrying out a coordinated investigation under [section 77](#).

108. Power of court or judicial inquest with regard to statements

Despite any provision in this Part to the contrary, 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 accident or 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 magistrate conducting a judicial inquest or person or persons appointed or designated to conduct a public inquiry must -

- (a) in camera, examine the statement; and
- (b) if the court or a judicial inquest or person or persons appointed or designated to conduct a public inquiry 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 -
 - (i) must order the production and discovery of the statement, subject to such restrictions or conditions as the judicial inquest or person or persons appointed or designated to conduct a public inquiry considers appropriate; and
 - (ii) may require any person to give evidence that relates to the statement.

109. Use of statement prohibited

A statement may not be used in any legal, disciplinary or other proceedings against the person who made it, except in a prosecution for perjury or for giving contradictory evidence or for a prosecution under [section 174](#).

110. Rules for reporting of accidents and incidents

The Director of Investigations may -

- (a) make rules relating to -
 - (i) the establishment and administration of systems for the mandatory or voluntary reporting to the Directorate of accidents or incidents, or such classes thereof as are specified in the rules; or
 - (ii) the protection of the identity of persons who report accidents or incidents; or
- (b) subject to this Act, use any report made to it pursuant to the rules made under paragraph (a) as it considers necessary in the interests of aviation safety.

111. Prohibition of use of reports made to Directorate under voluntary reporting system

A report made to the Directorate under a voluntary reporting system established by rules made under [section 110](#) may not be used in any legal, disciplinary or other proceedings against the person who made the report if the identity of the person is protected by those rules.

112. Certain information privileged

Where the identity of a person who has made a report to the Directorate pursuant to the rules made under [section 110](#) is protected by those rules, information that could reasonably be expected to reveal the identity of the person is privileged, and a person may not -

- (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.

113. Evidence

- (1) Subject to [section 174](#)(1) -
 - (a) a report purporting to have been signed by an investigator stating that the investigator has exercised any power pursuant to [section 84](#) and stating the results of the exercise of the power; or
 - (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 84](#),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.
- (2) A report or document may not be received in evidence under this section, unless the party intending to produce it has, at least seven days before producing it, served a notice of that intention on the party against whom it is intended to be produced, together with a copy of the report or document.
- (3) The party against whom a report or document is produced under this section may require the attendance, for the purposes of cross-examination, of the person who appears to have signed the report or certified the document as a true copy or extract.
- (4) An opinion of appointed staff of the Directorate or its accredited representatives, experts and advisers is not admissible in evidence in any legal, disciplinary or other proceedings.

114. Limitation of liability of staff, accredited representatives, experts and advisers of Directorate

An appointed staff of the Directorate, accredited representative, expert or adviser is not personally liable by virtue of any report or finding made or expressed in good faith or made known in terms of this Act.

115. Removal of parts of aircraft involved in accidents or incidents

A person may not without the authority of the Director of Investigations or his or her delegate remove, conceal or withhold, or attempt to remove, conceal or withhold any part of an aircraft involved in an accident or incident, or any property or item on board the aircraft.

116. Right of access over private land to wrecked or damaged aircraft

- (1) Where an aircraft is wrecked or damaged at any place or private land in Namibia, any person or persons, for the purposes of -
 - (a) rendering assistance to the aircraft or its occupants;
 - (b) saving the lives of the occupants of the aircraft; or
 - (c) saving the aircraft or its contents,unless there is some public road equally convenient, may, without being subject to interruption by the owner or occupier of such place or land, and without causing any considerable damage to such place or land -
 - (i) pass and re-pass over or land on such place or land with or without vehicles; or
 - (ii) deposit on such place or land any goods or other articles recovered from the aircraft.

- (2) Any owner or occupier of place or land who suffers direct injury or loss in consequence of subsection (1), which loss is not covered by a policy of insurance, is entitled to receive compensation in the amount determined by -
 - (a) agreement with the Minister; or
 - (b) the High Court, in default of the agreement referred to in paragraph (a).

Part 12 – CIVIL AVIATION SECURITY

117. National civil aviation security policy

Subject to this Act, the Authority must develop and review the national civil aviation security policy of Namibia.

118. National civil aviation security programme

The Authority must -

- (a) develop the NCASP in compliance with Annex 17 to the Chicago Convention;
- (b) review the NCASP to ensure that it continues to meet the obligations of Namibia and is consistent with Government policy;
- (c) define and allocate tasks in accordance with Government policy for implementation of the NCASP between Government entities, airline operators and other concerned parties;
- (d) develop technical criteria to be met by those persons responsible for implementing security measures under the NCASP;
- (e) constantly analyse the level of threat to civil aviation based upon information acquired by the Authority itself or provided by relevant government agencies whether through the National Civil Aviation Security Committee or otherwise and initiate such action by airlines, airports, providers of security services and other organisations contributing to the NCASP as are sufficient to effectively counter the perceived level of threat;
- (f) develop and implement policy to ensure that surveys, inspections, audits, tests and investigations of security standards and security measures as well as operating procedures of airports, airlines and providers of security services for purposes of the compilation of the NCASP are conducted;
- (g) receive, collate, analyse and disseminate information on any threat or incident and information on the numbers and types of prohibited articles discovered or confiscated and provide a technical reference and information centre for the use of the Authority, airport administrations, operators and security services;
- (h) foster and promote good working relationships, cooperation and the exchange of relevant information and experience among States, particularly with adjacent States and those with which Namibia has major air transport relationships;
- (i) develop and implement policy in respect of the development, promotion, production and the dissemination of suitable training materials that can be used in the training of persons concerned with the implementation of the NCASP;
- (j) develop national standards relating to the specifications of security equipment, systems and airport design;
- (k) coordinate security measures and procedures with appropriate organisations, agencies and relevant departments;
- (l) develop strategies to secure effective oversight, monitoring, and compliance with aviation security standards;

- (m) assess security related decisions taken by industry at all levels for the impact on aviation security, and conduct regular and timely assessment of international security developments;
- (n) develop effective strategies to secure compliance with facilitation standards in accordance with Annex 9 of the Chicago Convention;
- (o) develop the National Quality Program and ensure the implementation of the Quality Management System and Security Management System that are contained in the NCASP; and
- (p) develop aviation security training and standards.

119. National Aviation Security Committee

- (1) There is established a committee to be known as the National Aviation Security Committee.
 - (2) The National Aviation Security Committee consists of -
 - (a) the Executive Director who is the chairperson of the Committee;
 - (b) one person designated by the Minister;
 - (c) three staff members of the Authority designated by the Executive Director one of whom is an employee of the Air Navigation Services;
 - (d) a staff member of the Ministry designated by the Permanent Secretary;
 - (e) a staff member of the Namibia Airports Company that is incorporated pursuant to the Airports Company Act, 1998 (Act [No. 25 of 1998](#)), designated by the Chief Executive Officer;
 - (f) a member of the Namibian Defence Force designated by the Chief of the Defence Force;
 - (g) a staff member of the Namibia Central Intelligence Service designated by the Head of the Service;
 - (h) a member of the Namibian Police Force designated by Inspector- General of the Namibian Police Force;
 - (i) a staff member of the immigration division of the Ministry responsible for immigration designated by the Chief of Immigration;
 - (j) a staff member of the customs division of the Ministry responsible for customs designated by the Commissioner for Customs and Excise; and

[[[Section 26 and section 39(11) of the Namibia Revenue Agency Act [12 of 2017](#) both provide that a reference in any law to the Commissioner of Customs and Excise must now be construed as a reference to the Commissioner of the Revenue Agency. This presumably also applies to references to the Commissioner for Customs and Excise.]]

 - (k) any other person designated by the Executive Director on the basis of any relevant expertise.
 - (2) A member of the National Aviation Security Committee is subject to vetting by a competent authority for security clearance.
- [subsection incorrectly numbered in the Government Gazette as reproduced above]**
- (3) A person designated in pursuance of subsection (1), with the exception of the designated person in terms of subsection (1)(b), as a member of the National Aviation Security Committee must be a staff member of the management cadre of the institution concerned.
 - (4) In the process of developing the policies contemplated in [section 118](#), where any matter may affect any stakeholder in the aviation industry, the National Aviation Security Committee must consult with the stakeholder.

120. Powers and functions of National Aviation Security Committee

The powers and functions of the National Aviation Security Committee are to -

- (a) advise the Minister with regard to aviation security policy and the activities of the Committee;
- (b) review and make recommendations of the effectiveness of security measures and procedures;
- (c) coordinate the proper and diligent implementation of the National Aviation Security Program; and
- (d) promote security in the design or modification of airports, air navigation installations and other aviation facilities.

121. Meetings of National Aviation Security Committee

The National Aviation Security Committee -

- (a) may invite to a meeting of the Committee any person who has the required knowledge with regard to any specific matter to advise the Committee;
- (b) must -
 - (i) meet as often as the Chairperson considers necessary;
 - (ii) meet whenever the Minister submits a written request that it meets;
 - (iii) determine its own procedure for meetings; and
 - (iv) in the absence of the chairperson of the Committee, elect a person from amongst its members to preside at any meeting of the Committee.

122. Security program information confidential

All information concerning any program, personnel, equipment, system, agreement or special procedure regarding any matter concerning any security plan -

- (a) is confidential; and
- (b) may not be made known, except officially by a person authorised to do so to a person authorised to receive such information.

123. Secretariat of National Aviation Security Committee

The Executive Director must designate staff members of the Authority to assist the National Aviation Security Committee in its administration and clerical work.

124. Approval of aviation security program by Minister

The National Civil Aviation Security Program (NCASP) which is drawn up in terms of this Act is submitted to the Minister for approval and is, by virtue of such approval, binding -

- (a) on any official in the service of the State, any airport security officer or aviation security officer and any other person involved in the application of such security program; and
- (b) on any other person, including a member of the public, where the contents of such program have been brought to the notice of such person in a manner determined by the Executive Director.

125. Appointment of senior staff members of aviation security at designated aerodromes

- (1) The Minister must ensure that aviation security services are provided at all security designated aerodromes and security designated navigation installations.

- (2) The Minister, with the consent of the Authority and with the concurrence of the person in charge of a security designated aerodrome, must approve the appointment of the senior staff member of the aviation security services provider responsible for the execution of the aviation security program of the security designated aerodrome.
- (3) A person appointed in terms of subsection (2) must be a Namibian citizen.

126. Aviation security programme for aviation participants

- (1) The following aviation participants are required to have an aviation security programme in place from the date determined by the Minister by notice in the Gazette -
 - (a) the operator of a security designated aerodrome;
 - (b) the Air Navigation Services;
 - (c) any air carrier engaged in commercial air transport; and
 - (d) any other aviation participant designated by the Minister by notice in the Gazette or designated in the NCASP or security regulations.
- (2) An aviation participant who -
 - (a) fails to comply with subsection (1); or
 - (b) fails to comply with an aviation security program contemplated in subsection (1),commits an offence and is liable to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

127. Aviation security at security designated aerodromes and navigation installations

The Namibian Police Force and any authorised provider of aviation security service at the aerodrome or installation must -

- (a) act to prevent the commission of any offence committed in contravention of this Act at any designated or security designated aerodrome or security designated navigation installation; and
- (b) protect persons and properties from dangers arising from the commission or attempted commission of offences in contravention of this Act.

128. Authorised aviation security service providers

- (1) Subject to subsection (2), aviation security services at any security designated aerodrome or security designated navigation installation are provided by the operator of the aerodrome or navigation installation.
- (2) An operator of an aerodrome or navigation installation, or a person employed or contracted by such operator to provide aviation security service, may not provide aviation security service at the aerodrome or installation, except pursuant to a valid aviation document.
- (3) The holder of an aviation document must -
 - (a) comply with the relevant prescribed requirements and standards; and
 - (b) implement security controls.
- (4) The powers and functions of aviation security service providers are as prescribed by or under this Act.
- (5) An aviation security service provider must designate employees or contracted persons to be aviation security officers.

- (6) An aviation security officer referred to in subsection (5) has, in relation to the aerodrome or navigation installation at which he or she is employed, all the powers of an aviation security officer in terms of this Act.

129. Powers and functions of aviation security service providers

Without limiting the powers and functions of the Namibian Police Force under this Act or any other law, and without limiting the generality of [section 125\(1\)](#), the powers and functions of an aviation security service provider, are -

- (a) to carry out -
 - (i) crew, passenger, and baggage screening of such aircraft passengers as are required to be screened in accordance with any direction given pursuant to [section 133\(1\)](#) or any item as may be prescribed in the NCASP from time to time; and
 - (ii) the reasonable searches, or seizures specified in [section 133\(1\)](#);
- (b) to undertake, if necessary, reasonable searches of crew, passengers, baggage, cargo, aircraft, aerodromes and navigation installations;
- (c) to carry out aerodrome security patrols and patrols of navigation installations;
- (d) to review, inquire into, and keep itself informed on security techniques, systems, devices, practices, and procedures related to the protection of civil aviation and persons employed in or using it;
- (e) to prepare for every security designated aerodrome, with the approval of the Executive Director and after consultation with the Inspector- General of Police, an airport security program complying with the requirements of the (NCASP) for the purpose of protecting the safety, regularity and efficiency of the aerodrome and the safety of persons using the aerodrome;
- (f) to undertake, or encourage or supervise such experimental or research work in respect of any aspect of aviation security as the Executive Director may specify; and
- (g) for the purpose of better carrying out any of its functions under this Act, to co-operate with the Namibian Police Force, Government entities, airport authorities, operators, and authorities administering the airport security services of other countries, and with any appropriate international organisation.

130. Security designated aerodromes and navigation installations

- (1) The Minister, by notice in the Gazette, may designate any aerodrome or navigation installation as a security designated aerodrome or security designated navigation installation.
- (2) Any designation under subsection (1) may at any time be revoked, in whole or in part, or amended by the Minister by notice in the Gazette.

131. Security restricted areas

- (1) The Executive Director may require the operator of any security designated aerodrome or security designated installation to identify any area to be declared a security restricted area by affixing a sign or signs to that effect at the perimeter of any such area.
- (2) No person, other than a member of the police conducting a covert operation, may enter or remain in any security restricted area unless the person is -
 - (a) wearing an airport identity card or other identity document issued or approved under this Act and worn in accordance with this Act; and
 - (b) authorised by the Executive Director or the airport manager or other person having control of the area.

- (3) Despite subsection (2) -
- (a) a passenger or a crew member who is not in service or not on duty but is traveling on a flight by order of the flight operator embarking or disembarking directly through a gateway or thoroughfare in an airport approved for that purpose by the airport manager may pass through a security restricted area forming part of the gateway or thoroughfare without an airport identity card; or
 - (b) a person authorised by this Act may pass through a security restricted area without an airport identity card.
- (4) A person in a security restricted area must, on the request of an aviation security officer, state his or her name, address, the purpose of his or her presence in the security restricted area, and his or her authority to enter it, and must produce satisfactory evidence of the correctness of his or her stated name and address.
- (5) An aviation security officer may order a person to leave a security restricted area, if -
- (a) a person fails or refuses to provide an aviation security officer with satisfactory evidence of his or her name and address when the aviation security officer requested him or her to do so; or
 - (b) a person fails to satisfy the aviation security officer that he or she is authorised to be in the area.
- (6) An aviation security officer, and any person whom he or she calls to his or her assistance, may use such force as may be reasonably necessary to remove from any security restricted area any person who fails or refuses forthwith to leave the security restricted area after having been ordered by an aviation security officer to do so under subsection (5).
- (7) An aviation security officer may detain and within 24 hours deliver to a police officer a person who refuses or fails to comply with subsection (4) or (5) and persists in failing to comply, after having been warned that he or she was committing an offence.
- (8) An aviation security officer who is in uniform, or wearing a distinctive cap, hat, or helmet, with a badge of authority affixed to it, may signal or request the driver of a vehicle in a security restricted area to stop the vehicle immediately for the purpose of screening or searching the vehicle, and any item, substance, or person in the vehicle.
- (9) The driver of a vehicle that is stopped by an aviation security officer must remain stopped for as long as is reasonably necessary for the aviation security officer to screen or search the vehicle, or any item, substance or person in the vehicle.
- (10) A person who, without lawful authority or reasonable excuse, refuses or fails to -
- (a) stop a vehicle in a security restricted area immediately when required to do so by an aviation security officer; or
 - (b) remain stopped for as long as is reasonably necessary for the aviation security officer to screen or search the vehicle, or any item, substance or person in the vehicle,
- commits an offence and is liable to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding four years, or to both such fine and such imprisonment.

132. Right of access

- (1) Subject to subsections (2) and (3), an aviation security officer while on duty may at any time enter -
- (a) any security designated aerodrome or navigation installation; or

- (b) any aircraft, vehicle, building, or place in any part of a security designated aerodrome or navigation installation,
for the purpose of exercising or performing his or her powers or functions under or in terms of this Act.
- (2) Unless the aviation security officer is accompanied by a police officer, the power of entry conferred by subsection (1) is limited to peaceful and non-forced entry, except in emergency situation.
- (3) Where the Namibian Police Force has taken command of any situation at an aerodrome or navigation installation, the rights of aviation security officers to enter any part thereof or any aircraft, vehicle, building, or place is subject to such limitations as the senior Police officer present at the aerodrome or navigation installation specifies.
- (4) Where an aircraft or vehicle is not being used for commercial purposes, subsection (1) does not apply, unless the aviation security officer believes on reasonable grounds that there is in the aircraft or vehicle a person or thing likely to endanger the aerodrome or installation or any of its facilities or any person.

133. Executive Director to require screening, search and seizure

- (1) Where the Executive Director considers it to be in the public interest or national interest to do so, or he or she on reasonable grounds believes that a security risk exists, the Executive Director may direct an aviation security service provider, by notice in writing -
 - (a) to screen -
 - (i) any person boarding an aircraft;
 - (ii) anything to be carried on an aircraft; or
 - (iii) any person, item, or substance -
 - (aa) before the person, item, or substance enters a sterile area;
 - (bb) present in a sterile area;
 - (iv) any person, item, substance, or vehicle -
 - (aa) before the person, item, substance, or vehicle enters a security restricted area;
 - (bb) present in a security restricted area;
 - (v) any unattended item, substance or vehicle in a security restricted area;
 - (vi) any person who either has access to, or the potential to access any aircraft or any security restricted area or sterile area at any aerodrome or navigation installation or air navigation facility; or
 - (b) if necessary, to undertake reasonable searches of -
 - (i) any person boarding an aircraft;
 - (ii) anything to be carried by an aircraft; or
 - (iii) any, as specified in the notice -
 - (aa) aircraft or class of aircraft;
 - (bb) aerodrome or class of aerodrome;
 - (cc) navigation installation or class of navigation installation;
 - (iv) any person, item, substance, or vehicle -
 - (aa) before the person, item, substance, or vehicle enters a sterile area;

- (bb) present in a sterile area;
 - (v) any person, item, substance, or vehicle -
 - (aa) before the person, item, substance, or vehicle enters a security restricted area;
 - (bb) present in a security restricted area;
 - (vi) any unattended item, substance or vehicle in a security restricted area;
 - (vii) any vehicle within any security restricted area or sterile area or in any defined area adjacent to any such area; or
 - (viii) any person, vehicle, facility or installation, having access to, or where, in the opinion of the Executive Director, there exists with regard to such person, vehicle, facility or installation a potential to access any aircraft, security restricted area or sterile area at any aerodrome or navigation installation or air navigation facility;
 - (c) to seize any item or substance specified in the notice if the aviation security officer has reasonable grounds to believe that there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft.
- (2) An aviation security service provider directed under subsection (1) must screen and search for any item or substance specified in the notice referred to in that subsection.
- (3) Before directing an aviation security service provider under subsection (1), the Executive Director, to determine whether or not the direction is necessary to meet the security risk, must consult, as the Executive Director in each case considers appropriate and practical, the representative groups in the aviation industry, and any Government entity.
- (4) A direction made under subsection (1) remains in effect until it is rescinded by the Executive Director.
- (5) For the purpose of subsection (1)(b)(viii) “access”, includes that which is obtained or, in the opinion of the Executive Director, is obtainable -
- (a) directly by way of personal entry into or proximate approach to the aircraft, security restricted area or sterile area at any aerodrome or navigation installation or navigation facility;
 - (b) indirectly by way of the delivery, placement or concealment of any item, thing, matter or substance, into, on, within, or in proximity to the aircraft, security restricted area or sterile area at any aerodrome or navigation installation or navigation facility.

134. Security background checks by Executive Director

- (1) The Executive Director must carry out a security background check of a person who falls within a category of persons prescribed as requiring a security background check if -
- (a) the security background check is for the purpose of determining whether the person poses a threat to aviation security; and
 - (b) the person consents to such security background check.
- (2) If a person refuses consent to a security background check under subsection (1), the person may not be granted any authorisation required under this Act.
- (3) The Executive Director may grant a favourable security background check determination if the Executive Director decides that the person has undergone an alternative security background check that is acceptable to the Executive Director.

- (4) For the purpose of determining whether a person poses a threat to aviation security, the Executive Director may -
 - (a) seek and receive any information that the Executive Director considers relevant;
 - (b) give weight to any component of the information as the Executive Director considers appropriate in the circumstances.
- (5) If the Executive Director determines that a person does not pose a threat to aviation security, the Executive Director must advise the person of the favourable security background check determination.
- (6) The Executive Director may reconsider any previous security background check determination that the Executive Director has made if -
 - (a) new information is made available; or
 - (b) the Executive Director has reason to believe that the person may pose a threat to aviation security.
- (7) If the Executive Director proposes to reconsider any previous security background check determination, the Executive Director must -
 - (a) advise the person to whom the security background check determination relates that the Executive Director is reconsidering that determination;
 - (b) complete the reconsideration of that determination within 20 working days of advising the person under paragraph (a);
 - (c) if the reconsideration results in an adverse security background check determination or a proposed adverse security background check determination, initiate the review process set out in [section 136](#);
 - (d) if a favourable security background check determination was granted to the person under this Act, withdraw that authorisation for -
 - (i) the period of the reconsideration;
 - (ii) any subsequent review period under [section 135](#); and
 - (e) if a favourable security background check determination was granted to the person by any other entity, require that entity to withdraw the authorisation for -
 - (i) the period of the reconsideration; and

[paragraph incorrectly numbered in the Government Gazette as reproduced above]

 - (iii) any subsequent review period under [section 135](#).

135. Review procedures for security background check determinations

- (1) If the Executive Director proposes to make an adverse security background check determination with respect to a person, the Executive Director must -
 - (a) advise the person of the proposed determination and the reasons for the proposed determination;
 - (b) give the person written notice that, within 21 days of the date of the notice, the person may -
 - (i) seek legal advice or assistance with respect to the proposed determination;
 - (ii) respond to, comment on, or make submissions on the proposed determination; or
 - (iii) provide new information relevant to the proposed determination;

- (c) unless the Executive Director decides otherwise, give the person notice of the date on which the proposed determination is to be made, which date must be as soon as practicable after the expiry of the 21 days referred to in paragraph (b);
 - (d) consider any response, comment, submission, or new information that the person provides along with the information on which the proposed determination was made; and
 - (e) make a final determination and inform the person and any other affected party of the final determination and the reasons for the final determination.
- (2) If the Executive Director makes a final adverse security background check determination, the Executive Director must -
- (a) revoke any authorisation granted to the person by the Executive Director under this Act, if a favourable security background check determination is required under this Act for the authorisation; and
 - (b) require any other entity to revoke any authorisation granted to the person, if a favourable security background check determination is required under this Act for the authorisation.

136. Offence for performing activity after authorisation was withdrawn or revoked

A person who performs an activity that requires an authorisation -

- (a) after the authorisation has been withdrawn under [section 134\(7\)\(d\)](#) or (e); or
- (b) after the authorisation has been revoked under [section 135\(2\)](#),

commits an offence and is liable to a fine not exceeding N\$25 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

137. Offence for failure to comply with requirement to withdraw or revoke authorization

A person who refuses or fails, without reasonable excuse, to comply with the requirement of the Executive Director to -

- (a) withdraw an authorisation under [section 134\(7\)\(e\)](#); or
- (b) revoke an authorisation under [section 135\(2\)\(b\)](#),

commits an offence and is liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

[The phrase “commits and offence” should be “commits an offence”.]

138. Detection of dangerous goods by aviation security officer

- (1) Without limiting [sections 129\(a\)](#) and (b), an aviation security officer may screen any person boarding an aircraft or anything to be carried by an aircraft for the purpose of detecting dangerous goods.
- (2) If dangerous goods are detected and the aviation security officer has reasonable grounds to believe that they may not be lawfully carried on an aircraft, the aviation security officer may seize and detain the dangerous goods for the purpose of determining whether or not they may be lawfully carried on an aircraft.
- (3) If the aviation security officer determines that the dangerous goods may not be lawfully carried on an aircraft, the aviation security officer must notify the relevant operator or delivery service within 24 hours, and may -
 - (a) detain the dangerous good until they are dealt with in accordance with paragraph (b) or (c);

- (b) deliver the dangerous goods to the operator or delivery service; or
- (c) if the Executive Director agrees, destroy or otherwise dispose of the dangerous goods.
- (4) If the aviation security officer determines that the dangerous goods may be lawfully carried on an aircraft, the aviation security officer must, as soon as practicable, return the dangerous goods to the person from whom it was taken.
- (5) Despite anything in this section to the contrary, if the aviation security officer has reasonable grounds to believe that the dangerous goods pose an imminent risk to safety, the aviation security officer may destroy or otherwise dispose of the dangerous goods.
- (6) The aviation security officer must report the detection of dangerous goods in the prescribed manner.

139. Search and seizure of certain items or substances not authorised on board aircraft or into sterile areas by aviation security officers

- (1) Without limiting sections [129](#) or [149](#), an aviation security officer may, for the purpose of detecting any item or substance specified in a direction given under [section 133](#), screen or search any person, item, substance, or vehicle -
 - (a) before the person, item, substance, or vehicle enters a sterile area; or
 - (b) present in a sterile area.
- (2) A search undertaken under subsection (1) is carried out in accordance with the requirements for searches specified in [section 149\(5\)\(b\)](#) to (6).
- (3) If an item or substance specified in [section 204\(1\)](#) or in a direction under [section 133\(1\)](#) -
 - (a) is detected in a search undertaken under subsection (1) or section [129](#), [149](#) or [150](#); and
 - (b) there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft or into a sterile area,

the aviation security officer may seize and detain the item or substance for the purpose of determining whether there is lawful authority or reasonable excuse for the item or substance to be carried on an aircraft or into a sterile area.
- (4) If the aviation security officer determines that the item or substance may be lawfully carried into, or remain in, an aircraft or a sterile area, the aviation security officer must -
 - (a) if practicable, return the item or substance to the person from whom it was seized; or
 - (b) if it is not practicable to return the item or substance to the person from whom it was seized, deliver the item or substance to the operator of the aircraft that the person boarded or intended to board when the item or substance was seized.
- (5) If the aviation security officer determines that there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft or into a sterile area, the aviation security officer may -
 - (a) detain the item or substance until it is dealt with in accordance with paragraph (b) or (c);
 - (b) dispose of or destroy the item or substance; or
 - (c) deliver the item or substance to a police officer.
- (6) If an aviation security officer delivers an item or substance to a police officer under subsection (5) (c), the aviation security officer must record the delivery and the relevant details of the seizure.

- (7) Despite anything in this section to the contrary, if the aviation security officer has reasonable grounds to believe that an item or substance poses an imminent risk to safety, the aviation security officer may destroy or otherwise dispose of the item or substance.

140. Screen or search in security restricted areas by aviation security officers

- (1) Without limiting [section 133](#), an aviation security officer, for the purpose of detecting any item or substance specified in [section 204](#)(1) or in a direction given under [section 133](#)(1), may screen or search any person, item, substance, or vehicle -
- (a) before the person, item, substance, or vehicle enters a security restricted area; or
 - (b) present in a security restricted area.
- (2) A search undertaken under subsection (1) is carried out in accordance with the requirements for searches specified in [section 149](#)(5)(b) to (6).
- (3) If any item or substance specified in [section 204](#)(1) or in a direction under [section 133](#)(1) -
- (a) is detected in a search undertaken under subsection (1) or [section 129](#); and
 - (b) the aviation security officer has reasonable grounds to believe that there is no lawful authority or reasonable excuse for the item or substance to be carried into or remain in the security restricted area,
- the aviation security officer may seize and detain the item or substance for the purpose of determining whether there is lawful authority or reasonable excuse for the item or substance to be carried into or remain in the security restricted area.
- (4) If the aviation security officer determines that there is no lawful authority or reasonable excuse for the item or substance to be carried into or remain in the security restricted area, the aviation security officer -
- (a) must -
 - (i) detain the item or substance until it is delivered to a police officer, or, if the Executive Director agrees, destroy or otherwise dispose of the item or substance;
 - (ii) deny entry into the security restricted area to any person in possession of the item or substance; or
 - (iii) direct the person in possession of the item to leave the security restricted area, with or without -
 - (aa) the item or substance;
 - (bb) any vehicle used to transport the item or substance; and
 - (b) must record the item or substance and the person from whom the item or substance was seized, if any.
- (5) If the aviation security officer determines that the item or substance may be lawfully carried into or remain in the security restricted area, the aviation security officer must, if practicable, return the item or substance to the person from whom the item or substance was seized.
- (6) Despite anything in this section to the contrary, if the aviation security officer has reasonable grounds to believe that the item or substance poses an imminent risk to safety, the aviation security officer may destroy or otherwise dispose of the item or substance.

141. Consent to be screened or searched

- (1) The powers specified in [section 140](#)(1) may only be exercised with respect to -
 - (a) a person to be screened or searched with the consent of the person;
 - (b) an item, substance, or vehicle to be screened or searched with the consent of the person in possession of the item, substance, or vehicle.
- (2) An item, substance, or vehicle may be screened or searched without consent if it is unattended.

142. Refusal to consent to screening or search

- (1) If a person refuses to consent to be screened or searched under [section 140](#)(1), an aviation security officer may -
 - (a) deny that person entry into the security restricted area;
 - (b) require that person to -
 - (i) leave the security restricted area;
 - (ii) remove any item, substance, or vehicle from the security restricted area.
- (2) An aviation security officer may -
 - (a) prevent a person from entering a security restricted area if the person is denied entry;
 - (b) remove a person from a security restricted area if the person is required to leave.
- (3) An aviation security officer may detain a person who -
 - (a) refuses to leave when required to leave, or attempts to enter when denied entry, and persists in his or her refusal or attempt after being warned that he or she commits an offence by not complying;
 - (b) refuses to be screened or searched if the aviation security officer has reasonable grounds to believe that -
 - (i) sections [196](#), [204](#), [205](#), [206](#) or [207](#) has been, is being, or is likely to be contravened, whether by that person or by any other person; or
 - (ii) a search of the person refusing to consent is likely to disclose evidence that an offence in terms of this Act has been, is being, or is likely to be, committed, whether by that person or any other person.
- (4) A person detained under subsection (3) must be delivered to a police officer within 24 hours of detention.
- (5) An aviation security officer, or any person assisting an aviation security officer, may use reasonable force, or any assistance that is reasonably necessary in the circumstances, to -
 - (a) prevent a person from entering a security restricted area under subsection (2)(a);
 - (b) remove a person from a security restricted area under subsection (2)(b); or
 - (c) detain a person under subsection (3).

143. Search of persons refusing consent to be searched

- (1) If a person refuses to consent to the screening or searching under [section 140](#)(1), a police officer may -
 - (a) without a warrant, search the person and any item, substance, or vehicle in the possession of the person;
 - (b) detain the person for the purposes of the search; or
 - (c) take possession of any item or substance found in the course of the search that is specified in [section 204](#)(1),if the police officer has reasonable grounds to suspect that -
 - (i) an offence in terms of sections [196](#), [204](#), [205](#), [206](#) or [207](#) has been, is being, or is likely to be committed, whether by the person or by any other person; and
 - (ii) a search of the person refusing to consent, or any item, substance or vehicle in the possession of the person, is likely to disclose evidence that an offence in terms of sections [196](#), [204](#), [205](#), [206](#) or [207](#) has been, is being, or is likely to be, committed, whether by the person or any other person.
- (2) The refusal of a person to consent to the searching of his or her person, or any item, substance, or vehicle in his or her possession, does not of itself constitute reasonable grounds for suspecting that an offence against section [196](#), [204](#), [205](#), [206](#) or [207](#) has been, is being, or is likely to be, committed.
- (3) A police officer exercising the power of search under subsection (1) must, before the search is conducted, and on any subsequent request -
 - (a) provide proof of his or her identity to the person to be searched;
 - (b) inform the person to be searched that the search is authorised under this section; and
 - (c) if not in uniform, provide proof, if asked, that he or she is a police officer to the person to be searched.
- (4) If a police officer exercises the power of search under subsection (1), he or she must, within three days after the day on which he or she exercises the power, furnish to the Inspector-General of Police a written report on the exercise of the power and the circumstances in which it came to be exercised.

144. Search of persons

With respect to a search made under [section 140](#)(1) -

- (a) a person must, if directed to do so by an aviation security officer, comply with any such instructions as may be lawfully given concerning a search of a person;
- (b) a female may only be searched by a female and a male may only be searched by male, unless the search is made by means of a mechanical or electrical or electronic or other similar device.

145. Limitation of liability for aviation security officers

Nothing done by an aviation security officer under sections [139](#), [140](#), [149](#), [150](#) and [152](#) may subject the aviation security officer to personal liability, if it is done in -

- (a) good faith; and
- (b) the exercise of powers or the performance of functions under or in terms of this Act.

146. Arrest and seizure of items or substances

- (1) An aviation security officer is justified in arresting without a warrant any person on or in the vicinity of any security designated aerodrome or security designated navigation installation if he or she has reasonable grounds to believe that an offence has been or is being committed by the person in contravention of -
 - (a) section [196](#), [204](#), [205](#), [206](#) or [207](#);
 - (b) section 22 of the Arms and Ammunition Act relating to the prohibition of importation or exportation of arms and ammunition without permit;
 - (c) section 29(1) of the Arms and Ammunition Act relating to the prohibition of unauthorized importation, supply or possession of certain fire-arms or classes of articles.
- (2) An aviation security officer may -
 - (a) search a person arrested under subsection (1);
 - (b) seize any item or substance that may be evidence of an offence against an enactment specified in subsection (1), if the officer has reasonable grounds to believe that -
 - (i) the person has an item or substance hidden or in clear view on or about his or her person that is evidence of an offence against an enactment specified in subsection (1);
 - (ii) the item or substance poses a threat to the safety of the officer or any other person; and
 - (iii) immediate action is necessary to address the threat.
- (3) An aviation security officer may use reasonable force, or any assistance that is reasonably necessary in the circumstances, to -
 - (a) arrest a person under subsection (1);
 - (b) search a person under subsection (2); or
 - (c) seize an item or substance under subsection (2).
- (4) To avoid doubt, an aviation security officer may search a person under this section whether or not an aviation security officer has previously searched the person under any other section.
- (5) An aviation security officer who undertakes a search under this section must, within three working days of the search, give the Executive Director a written report of the search that covers the circumstances in which it was conducted and the matters that gave rise to the reasonable grounds to believe as required by subsection (2) (b).
- (6) A person called upon by an aviation security officer to arrest any person is justified in assisting the aviation security officer to do so in good faith.
- (7) An aviation security officer must as soon as practicable deliver any person that he or she arrests, and any item or substance that he or she seizes to a police officer.
- (8) An aviation security officer may seize an item or substance in the possession of a person that the aviation security officer arrests if the aviation security officer has reasonable grounds to believe that the item or substance is evidence of an offence under this Part.

147. Arrest of persons delivered to police officer

- (1) A police officer must accept delivery of a person whom an aviation security officer seeks to deliver to him or her under this Act if he or she has reasonable grounds to suspect the person of having done or omitted to do anything if that act or omission is an offence in terms of [section 199](#) or any law specified in [section 146](#)(1).

- (2) A police officer who accepts delivery of a person under subsection (1) may forthwith arrest that person.
- (3) An aviation security officer who detains any person in accordance with [section 131\(7\)](#) and delivers him or her to a police officer, and any person who at his or her request and in good faith assists an aviation security officer in doing so, is justified -
 - (a) in so detaining and delivering the person to the police officer; and
 - (b) in using such force as may be reasonably necessary to deliver the person to the police officer.

148. Powers of police officer

A police officer may exercise any power conferred on an aviation security officer under this Act.

149. Search of passengers and baggage

- (1) A police officer, an aviation security officer, or a customs officer or an employee or agent of the carrier authorised by the carrier for the purpose, may, with the consent of the passenger -
 - (a) search a passenger and the baggage of the passenger;
 - (b) personal effects, or other articles in the possession of the passenger or in the possession of another person, being a person accompanying the passenger,before the passenger boards any aircraft in Namibia pursuant to any contract providing for the carriage of the passenger by air from any place in Namibia to any other place, whether in Namibia or elsewhere.
- (2) If the passenger declines to allow himself or herself or his or her baggage to be searched, the carrier must refuse to carry -
 - (a) the passenger; or
 - (b) his or her baggage.
- (3) Where embarkation of a passenger is refused under subsection (2), an aviation security officer may -
 - (a) direct the passenger in writing to leave the airport for a period of up to 24 hours;
 - (b) place the passenger under surveillance at the airport.
- (4) A carrier is not liable to any civil proceedings, other than proceedings in respect of any right that the passenger may have for the recovery of the fare or any part thereof, by reason of the fact that the carrier has refused to carry -
 - (a) the passenger who has declined to allow himself or herself or his or her baggage to be screened or searched;
 - (b) the baggage of the passenger who has declined to allow himself or herself or his or her baggage to be screened or searched.
- (5) With respect to any search made pursuant to subsection (1) -
 - (a) by an employee or agent of the carrier authorised by the carrier for the purpose, the passenger is not required to remove any article of clothing, other than a coat and similar clothing, for the purpose of being searched;
 - (b) by a police officer, an aviation security officer, or a customs officer, the passenger must, if directed to do so, comply with any such instructions as may be lawfully given concerning a search of a person;
 - (c) by a police officer, an aviation security officer, a customs officer, or an employee or agent of the carrier authorised for the purpose, a female may only be searched by a female and

male by male unless the search is made by mean of a mechanical or electrical or electronic or other similar device.

- (6) Subject to subsection (7) with respect to a search made under subsection (1) a police officer, an aviation security officer, or a customs officer, may use any aid or device that is reasonably necessary to facilitate the search, including a dog, chemical substance, or x-ray or imaging equipment, or some other mechanical or electrical or electronic device.
- (7) With respect to a person searched under subsection (1), a police officer, an aviation security officer, a customs officer, or an agent of the carrier authorised for the purpose, unless prior written authorization has been obtained from the Minister on the advice of the Executive Director, may not use an aid or device that produces an unclothed image of the person.

150. Proportional screening and search of other persons and things

- (1) If -
 - (a) the Minister considers it to be in the public or national interest to do so; or
 - (b) the Executive Director believes on reasonable grounds that a security risk exists,the Executive Director may direct an aviation security service provider, to screen and search at random and at minimum on a proportional basis determined by risk assessment any goods or any person who, in the opinion of the Executive Director, has access to, or the potential to access -
 - (i) any aircraft at any aerodrome or air navigation facility; or
 - (ii) any security restricted area or sterile area at any aerodrome or navigation installation or air navigation facility.
- (2) For the purpose of this section “access”, includes -
 - (a) direct personal entry into or proximate approach to an aircraft, area, installation or facility referred to in subsection (1);
 - (b) indirect placement, concealment or delivery of any item, thing, matter or substance, into, on, within, or in proximity to an aircraft, area, installation or facility referred to in subsection (1).
- (3) An aviation security officer may search at random and at minimum on a proportional basis determined by risk assessment any place of work or installation whose personnel, in the opinion of the Executive Director, has access to any aircraft or any security restricted area or sterile area at any aerodrome or navigation installation or air navigation facility.
- (4) Any search of a person made pursuant to subsection (1) is carried out in accordance with the requirements for search specified in section 1495(b) to (6).

151. Search of persons whom carrier refused to carry for having declined to allow screening or search

- (1) Where -
 - (a) pursuant to [section 149\(2\)](#) a carrier refuses to carry a person who has declined to allow himself or herself or his or her baggage to be screened or searched; or
 - (b) a police officer has reasonable grounds to suspect that an offence under this Act has been, is being, or is likely to be, committed, whether by a person who has declined to allow himself or herself or his or her baggage to be screened or searched or by any other person;the police officer may, without warrant -
 - (i) search the person and his or her baggage and any articles in his or her possession;

- (ii) detain the person for the purposes of the search; or
 - (iii) take possession of any article referred to in [section 204\(1\)\(a\), \(b\), \(c\), \(d\), \(e\) or \(f\)](#) found in the course of the search.
- (2) A police officer exercising the power of search conferred by subsection (1) must -
 - (a) identify himself or herself to the person searched;
 - (b) tell the person searched that the search is being made pursuant to that subsection; and
 - (c) if not in uniform and if so required, produce proof that he or she is a police officer.
- (3) With respect to a search made under subsection (1) a police officer may use any aid or device that is reasonably necessary to facilitate the search, including a dog, chemical substance, or x-ray or imaging equipment, or some other mechanical or electrical or electronic device.

152. Screening, search and seizure of checked baggage, cargo and mail

- (1) An aviation security officer, or any employee or agent of the carrier authorised by the carrier for the purpose, may screen, search or examine any checked baggage, cargo or mail before it is loaded on to any aircraft in Namibia pursuant to a contract providing for the carriage of the checked baggage, cargo and mail by air from a place in Namibia to any other place, whether in Namibia or elsewhere.
- (2) With respect to a search made under subsection (1) a police officer, an aviation security officer or a customs officer may use any aid or device that is reasonably necessary to facilitate the search, including a dog, chemical substance, or x-ray or imaging equipment, or some other mechanical or electrical or electronic device.
- (3) Where an aviation security officer, upon screening or examination of any checked baggage, cargo or mail, has reasonable grounds to suspect that an offence or breach against this Act in relation to the aircraft on which the checked baggage, cargo or mail was to be carried has been, is being, or is likely to be, committed, whether by -
 - (a) a passenger;
 - (b) a consignor of cargo; or
 - (c) any other person,the aviation security officer may take possession of any article referred to in [section 204\(1\)\(a\), \(b\), \(c\), \(d\), \(e\) or \(f\)](#) found in the course of the search.

153. Admissibility of evidence found in course of screening or search

Nothing found in the course of a screening, search or examination made pursuant to sections [129](#), [139](#), [140](#), [149](#), [150](#), [151](#) or [152](#) is admissible as evidence in any criminal proceedings against -

- (a) the person who, or whose baggage, has been screened, searched or examined; or
 - (b) the consignor of any cargo that has been screened, searched or examined,
- except in the proceedings in respect of an offence against -
- (i) this Act;
 - (ii) the crime of treason or any offence punishable by life imprisonment or imprisonment for a period of three years or more;
 - (iii) sections 22 of the Arms and Ammunition Act, relating to the unlawful importation of arms and ammunition, or section 29(1) of that Act, relating to unlawful possession of firearms, ammunition, explosives and incendiary devices; or

- (iv) the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971 (Act [No. 41 of 1971](#)).

154. Powers of pilot-in-command

- (1) If the pilot-in command of an aircraft in flight, wherever that aircraft may be, has reasonable grounds to believe that a person on board the aircraft has done, is doing or is about to do, on board the aircraft -
 - (a) anything which is an offence under the law of the country in which the aircraft is registered; or
 - (b) anything, whether an offence or not, which jeopardises or may jeopardise -
 - (i) the safety of the aircraft or of persons or property on board the aircraft; or
 - (ii) good order and discipline on board the aircraft,

the pilot-in-command may take such reasonable measures, including restraint, as may be necessary against the person.
- (2) The measures taken under subsection (1) are taken -
 - (a) to protect the safety of the aircraft or of persons or property on board the aircraft;
 - (b) to maintain good order and discipline on board the aircraft; or
 - (c) to enable the pilot-in-command to disembark or deliver the person in accordance with subsection (5) or (6).
- (3) A member of the crew of an aircraft, an in-flight security officer or any other person on board the aircraft may -
 - (a) at the request or with the authority of the pilot-in-command of the aircraft, restrain any person whom the pilot-in-command may restrain under subsection (1), and any member of the crew, if so required by the pilot-in-command, must assist in restraining the person; or
 - (b) without the authority of the pilot-in-command, take against any person on board the aircraft such reasonable measures, including restraint, to protect the safety of the aircraft, persons or property on board the aircraft as he or she has reasonable grounds to believe that the measures are immediately necessary.
- (4) A restraint imposed on any person on board an aircraft under subsection (1) or (2) -
 - (a) does not continue after the aircraft ceases to be in flight, unless the pilot-in-command of the aircraft notifies the appropriate authorities of the country in which the aircraft ceases to be in flight, either before or as soon as practicable after the flight ceases, that a person on board is under restraint and the reasons for the continuation of the restraint;
 - (b) may be continued -
 - (i) for any period, including the period of any further flight, between that time and the first occasion thereafter on which the pilot-in-command is able with the requisite consent of the appropriate authorities to disembark or deliver the person under restraint in accordance with subsection (5) or subsection (6); or
 - (ii) if the person under restraint agrees to continue his or her journey under restraint on board the aircraft.
- (5) If the pilot-in-command of an aircraft has reasonable grounds to believe that a person on board the aircraft has done or is about to do on board the aircraft anything, whether an offence or not, which jeopardises or may jeopardise -
 - (a) the safety of the aircraft or of persons or property on board the aircraft; or

- (b) good order and discipline on board the aircraft,
he or she may, if he or she considers it necessary to do so in order to protect the safety of the aircraft, disembark the person in any country in which the aircraft may be.
- (6) If the pilot-in-command of an aircraft has reasonable grounds to believe that any person on board the aircraft has done on board the aircraft anything which in his or her opinion is a serious offence under the law of the country in which the aircraft is registered, he or she may deliver the person -
 - (a) in Namibia, to any police officer; or
 - (b) in any other country which is a party to the Tokyo Convention, to any person exercising functions corresponding to those of a police officer in Namibia.
- (7) If the pilot-in-command of an aircraft disembarks any person pursuant to subsection (5), in the case of a Namibian aircraft, in any country, or, in the case of any other aircraft, in Namibia, he or she must report the fact and the reasons for the disembarkation to an appropriate authority in the country of disembarkation, being, in Namibia, a police officer and also, within 48 hours, to the Authority.
- (8) If the pilot-in-command of an aircraft intends to deliver any person in accordance with subsection (6) in Namibia or, in the case of a Namibian aircraft, in any other country which is a party to the Tokyo Convention, he or she must, before or as soon as practicable after landing, give notification of his or her intention and of the reasons for his or her intention to an appropriate authority in the country, in Namibia, being a police officer.
- (9) A pilot-in-command of an aircraft who without reasonable cause fails to comply with subsection (7) or (8) commits an offence and is liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding 6 months, or to both such fine and such imprisonment.
- (10) A person who in good faith imposes reasonable measures, including restraint, on another person in accordance with this section does not commit any offence and is not liable to any civil claim or proceedings in respect of those measures.

155. Delivery by pilot-in-command of disembarked persons

Where the pilot-in-command of an aircraft delivers a person to a police officer in accordance with [section 154\(6\)](#), the police officer must -

- (a) accept delivery of the person, if he or she has reasonable grounds to suspect the person of having done or omitted to have done anything on board the aircraft that is an offence against this Act or any other law; and
- (b) after having complied with paragraph (a) arrest the person.

156. Search of persons and baggage on aircraft

If the commander of an aircraft in flight has reasonable grounds to suspect that an offence against this Act has been, is being, or is likely to be, committed on board or in relation to the aircraft -

- (a) the commander;
- (b) any member of the crew of the aircraft; or
- (c) any other person on board the aircraft authorised by the commander to do so,

may search any person or baggage on board the aircraft, and may take possession of any article found which has been used or could be used to effect or facilitate the commission of a crime in terms of this Act.

157. Approval of carriage and use of firearms, weapons, ammunition, and other equipment by in-flight security officers

The Executive Director may approve firearms, weapons, ammunition, and other equipment for carriage and use on board an aircraft by an in-flight security officer.

158. Foreign in-flight security officers

- (1) Despite [section 204](#), the Executive Director, with the consent of the Inspector-General and other affected parties the Executive Director considers appropriate, and in accordance with this Act, may authorise a foreign in-flight security officer who is, or a class of foreign in-flight security officers who are, accompanied by a police officer and is or are carrying an item, being a firearm, weapon, ammunition, or any other equipment, to -
 - (a) disembark from an aircraft;
 - (b) board an aircraft;
 - (c) pass through a -
 - (i) security restricted area;
 - (ii) sterile area.
- (2) The authorisation of a foreign in-flight security officer by -
 - (a) the Executive Director is not an aviation document;
 - (b) the State that has issued the air operating certificate, or its equivalent, for the aircraft operator only applies while the aircraft is in service.

159. Authorisation of police officers to be in-flight security officers

- (1) The Inspector-General may authorise any police officer to be an in-flight security officer.
- (2) When providing authorisation under subsection (1), the Inspector-General must have regard to the views of the Executive Director.
- (3) When forming his or her views, the Executive Director, as he or she considers appropriate and practical, must have regard to the views of representative groups in the aviation industry.

160. Possessing, carrying, and use of firearms, weapons, ammunition and other equipment on board certain aircraft in certain circumstances by in-flight security officers

Despite [section 204](#), an in-flight security officer may, on board an aircraft operated by an operator conducting commercial air transport operations in Namibia, possess, carry, and use a firearm, weapon, ammunition, or other equipment that the Executive Director has approved under [section 157](#) if -

- (a) the officer is on duty; and
- (b) the aircraft is in flight.

161. Taking of action or measures reasonably necessary to restore or preserve control of aircraft by in-flight security officers

Without limiting the powers of the commander of an aircraft or a person authorised by the commander under [section 154](#), an in-flight security officer may take all measures reasonably necessary to restore control of an aircraft to the commander or to preserve the control of the aircraft by the commander, including the use of -

- (a) reasonable force; or

- (b) assistance that is reasonably necessary in the circumstances.

162. Arresting of persons in certain circumstances by in-flight security officers

- (1) If an in-flight security officer reasonably suspects that a person on board an aircraft has committed or is committing an offence under this Act, the in-flight security officer may arrest the person -
 - (a) without a warrant;
 - (b) with the use of -
 - (i) reasonable force; or
 - (ii) assistance that is reasonably necessary in the circumstances.
- (2) Despite subsection (1), an in-flight security officer may not arrest a person without the prior approval of the commander of an aircraft unless seeking prior approval is not practicable.
- (3) If an in-flight security officer arrests a person without the prior approval of the commander of an aircraft, the in-flight security officer must -
 - (a) inform the commander of the arrest as soon as practicable; and
 - (b) seek the approval of the commander to keep the person under arrest.
- (4) An in-flight security officer who arrests a person under this section must, as soon as practicable, deliver the person to -
 - (a) a police officer, if the arrested person is in Namibia; or
 - (b) a person exercising the functions corresponding to those of a police officer, if the arrested person is in a country other than Namibia that is a party to the Tokyo Convention.
- (5) Nothing in this section limits the justifications for the use of force under any other law.

163. Restraining of persons under arrest in certain circumstances by in-flight security officers

- (1) Subject to subsection (2), an in-flight security officer may, with the use of reasonable force, or assistance that is reasonably necessary in the circumstances, restrain a person arrested under [section 162](#) until the person is delivered as required under [section 162](#)(4).
- (2) An in-flight security officer may not restrain a person without the prior approval of the commander of the aircraft, unless -
 - (a) seeking prior approval is not practicable; or
 - (b) the in-flight security officer has reasonable grounds to believe that the person must be restrained immediately to protect the safety of the aircraft or persons or property on the aircraft.
- (3) If an in-flight security officer restrains a person without the prior approval of the commander of an aircraft, the in-flight security officer must -
 - (a) inform the commander of the restraint as soon as practicable; and
 - (b) seek the approval of the commander to keep the person under restraint.

164. Searching of certain persons and seizing of items or substances in certain circumstances by in-flight security officers

- (1) If an in-flight security officer reasonably suspects that a person on board an aircraft has committed, is committing, or is likely to commit an offence under this Act, the in-flight security officer may, with the use of reasonable force, or of assistance that is reasonably necessary in the circumstances -
 - (a) search -
 - (i) the person for any item or substance that has been, is being, or may be, used to commit an offence under this Act;
 - (ii) any property on board the aircraft for any item or substance that has been, is being, or may be used to commit an offence under sections [196](#), [204](#), [205](#), [206](#) or [207](#); and
 - (b) seize the item or substance contemplated under paragraph (a).
- (2) Despite subsection (1), an in-flight security officer may not search a person without the prior approval of the commander of an aircraft unless seeking prior approval is not practicable.
- (3) If an in-flight security officer searches a person without the prior approval of the commander of an aircraft, the in-flight security officer must inform the commander of the search as soon as practicable.
- (4) With respect to a search made under subsection (1), an in-flight security officer may use any aid or device that is reasonably necessary to facilitate the search, including a dog, chemical substance, or x-ray or imaging equipment, or some other mechanical, electrical, or electronic device.

165. Persons assisting in-flight security officer to use reasonable force in certain circumstances

A person assisting an in-flight security officer under section [162](#), [163](#) or [164](#) is justified in using force if -

- (a) the person acts in good faith; and
- (b) the force is reasonable.

Part 13 – GENERAL OFFENCES**166. Applying for aviation document while disqualified**

- (1) A person who applies for or obtains an aviation document while disqualified by an order of the court from obtaining such a document -
 - (a) commits an offence; and
 - (b) the document so obtained is of no effect.
- (2) A person who commits an offence in terms of subsection (1) is liable -
 - (a) in the case of an individual, to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment; or
 - (b) in the case of a juristic person, to a fine not exceeding N\$100 000 and the court may order the person to be disqualified from holding or obtaining an aviation document for such period not exceeding 12 months as the court thinks fit.

167. Communicating false information or failing to disclose information relevant to granting or holding of aviation document

A person who -

- (a) by any means, provides to the Executive Director information relevant to the exercise of powers of the Executive Director under this Act, knowing the information to be false;
- (b) being an applicant for an aviation document, fails, without reasonable excuse, to provide to the Executive Director information known to that person which is relevant to the exercise of powers of the Executive Director under this Act; or
- (c) being the holder of an aviation document, fails, without reasonable excuse, to provide to the Executive Director information known to that person which is relevant to the condition specified in [section 68\(4\)](#),

commits an offence and is liable -

- (i) in the case of an individual, to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment; or
- (ii) in the case of a juristic person, to a fine not exceeding N\$250 000.

168. Obstruction of persons duly authorised by Executive Director

- (1) A person who obstructs or impedes a person who is duly authorised by the Executive Director and acting in the exercise or performance of any powers or functions conferred or imposed on him or her by or under this Act commits an offence and is liable -
 - (a) to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment; or
 - (b) in the case of a juristic person, to a fine not exceeding N\$50 000.
- (2) Subsection (1) applies only where the person obstructed or impeded is in a uniform or produces proof of his or her authority.

169. Failure or refusal to produce or surrender documents

A person who, without reasonable excuse, fails or refuses to comply with a requirement for the production or surrender of documents or other records in accordance with this Act commits an offence and is liable to a fine not exceeding N\$5 000 or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.

170. Trespassing aerodrome, building or area used for civil aviation

- (1) A person who, without reasonable excuse, enters or remains within any aerodrome or any building or area in which are operated technical facilities or services for civil aviation, when directed not to enter or not to so remain by -
 - (a) a person duly authorised by the Executive Director in writing for that purpose,
 - (b) a police officer, or an aviation security officer; or
 - (c) a notice posted by one of those persons,commits an offence of trespassing and is liable to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.
- (2) A person who, without reasonable excuse, introduces or causes to be introduced into, or drives an unauthorised vehicle into a security restricted area or into any part of an aerodrome or building or

other area in which are operated technical facilities or services for civil aviation when directed not to do so or to remain there by -

- (a) a person duly authorised by the Directorate in writing for that purpose;
- (b) a police officer or aviation security officer; or
- (c) a notice posted by any one of the persons referred to in paragraph (a) or (b),

commits an offence of trespassing and is liable to a fine not exceeding N\$20 000 or imprisonment for a period not exceeding two years, or both such fine and such imprisonment.

171. Failure to maintain accurate records

A person who contravenes any provision of this Act or any regulation that requires the person -

- (a) to make accurate entries in a record;
- (b) to maintain an accurate record; or
- (c) to produce to the Minister or the Executive Director an accurate record,

commits an offence and is liable -

- (i) in the case of an individual, to a fine not exceeding N\$25 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment; or
- (ii) in the case of a juristic person, to a fine not exceeding N\$150 000.

172. Failure to notify acts committed contrary to this Act during emergency

A pilot-in-command who, without reasonable excuse, fails to comply with [section 71](#)(7) relating to the notification of an act committed contrary to this Act during an emergency commits an offence and is liable to a fine not exceeding N\$25 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

173. Failure to notify accident or incident

A pilot-in-command or operator who, without reasonable excuse, fails to comply with [section 90](#)(1), (2) or (3), relating to the notification of an accident or incident, commits an offence and is liable -

- (a) in the case of an individual, to a fine not exceeding N\$50 000 or to imprisonment for a period of two years and, if the offence is a continuing one, to a further fine not exceeding N\$10 000 for every day or part of a day during which the offence is continued; or
- (b) in the case of a juristic person, to a fine not exceeding N\$250 000 and, if the offence is a continuing one, to a further fine not exceeding N\$50,000 for every day during which the offence is continued.

174. Offences relating to disclosure of privileged information

(1) A person who -

- (a) knowingly communicates or permits to be communicated to any other person an on board recording in breach of [section 100](#)(a);
- (b) knowingly communicates or permits to be communicated to any person a privileged statement in breach of [section 106](#)(2); or
- (c) knowingly communicates or permits to be communicated to any person privileged identity information in breach of [section 112](#)(a),

commits an offence and is liable -

- (i) in the case of an individual, to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment; or
 - (ii) in the case of a juristic person, to a fine not exceeding N\$500 000.
- (2) A person who knowingly communicates or permits to be communicated any information pertaining to the content, design, management or operation of any aviation security equipment, facility, procedure or other security measure in effect at, or intended for -
 - (a) any aerodrome;
 - (b) air navigation installation or aircraft; or
 - (c) entity associated with the supply of goods and services to any such aerodrome, air navigation installation or aircraft,in breach of any confidentiality requirement or knowingly communicates or permits to be communicated such information to any person or organisation having no lawful interest in the receipt of the same commits an offence and is liable -
 - (i) in the case of an individual, to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment; or
 - (ii) in the case of a juristic person, to a fine not exceeding N\$1 million.

175. Offences relating to production and discovery of on board recordings and statements

A person who contravenes -

- (a) any restriction or condition imposed by any court or judicial inquest in ordering the production and discovery of an on board recording pursuant to [section 103](#); or
- (b) any restriction or condition imposed by any court, or person conducting an inquest or public enquiry in ordering the production and discovery of a statement pursuant to [section 108](#),

commits an offence and is liable -

- (i) in the case of an individual, to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment; or
- (ii) in the case of a juristic person, to a fine not exceeding N\$500 000.

176. Failure to provide identifying information

An operator of an aircraft or holder of a certificate of registration who, without reasonable excuse, fails to comply with [section 230](#), relating to the identification of the pilot in command of an aircraft commits an offence and is liable -

- (a) in the case of an individual, to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding two years; or
- (b) in the case of a juristic person, to a fine not exceeding N\$250 000.

177. Contravention of emergency regulation, prohibition, or condition

A person who, without reasonable excuse, acts in contravention of or fails to comply with any emergency regulation made under [section 59](#) or any prohibition or condition notified under [section 47](#) commits an offence and is liable -

- (a) in the case of an individual, to a fine not exceeding N\$25 000 or to imprisonment for a period not exceeding two years; or
- (b) in the case of a juristic person, to a fine not exceeding N\$150 000.

178. Flight over foreign country without authority or for improper purpose

- (1) This section applies to -
 - (a) any aircraft that is registered or required to be registered in Namibia under this Act; and
 - (b) any other aircraft operated by a person who is a permanent resident of Namibia or whose principal place of business is in Namibia.
- (2) A person who, being the operator or pilot-in-command of an aircraft to which this section applies that is being flown over a foreign country or territory, knowingly allows the aircraft to be used for a purpose that is prejudicial -
 - (a) to the security of;
 - (b) to public order or public health of; or
 - (c) to the safety of air navigation in relation to,the country or territory commits an offence.
- (3) In any prosecution for an offence under subsection (2), where it is proved that the aircraft was used for a purpose that is prejudicial to -
 - (a) the security of;
 - (b) public order or public health of; or
 - (c) the safety of air navigation in relation to,the foreign country or territory, in the absence of evidence to the contrary, it is presumed that the defendant knew that the aircraft was being so used.
- (4) A person who, being the operator or pilot-in-command of an aircraft to which this section applies that is being flown over any foreign country or territory, knowingly fails to comply with any direction that is given in respect of the aircraft by the appropriate aeronautical authority of the country or territory where -
 - (a) the flight is not duly authorised; or
 - (b) there are reasonable grounds for the appropriate aeronautical authority to believe that the aircraft is being or will be used for a purpose that is prejudicial to -
 - (i) the security of;
 - (ii) the public order or public health of; or
 - (iii) the safety of air navigation in relation to,the country or territory, unless the lives of persons on board the aircraft or the safety of the aircraft would be endangered by complying with the direction,commits an offence.
- (5) In any prosecution for an offence under subsection (4), where it is proved by the prosecution that the defendant failed to comply with a direction that was given in respect of that aircraft by the appropriate aeronautical authority, in the absence of evidence to the contrary, it is presumed that the defendant knew that the direction had been given.
- (6) The requirement in subsection (4) is, without prejudice to any other requirement, to comply with directions given by an aeronautical authority.
- (7) For the purposes of this section, “appropriate aeronautical authority”, includes any person, whether a member of the military authorities or the civil authorities of the foreign country or territory, who

is authorised under the law of the foreign country or territory to issue directions to aircraft flying over the country or territory.

- (8) A person who commits an offence in terms of subsection (2) or (4) is liable -
- (a) in the case of an individual, to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment; or
 - (b) in the case of a juristic person, to a fine not exceeding N\$500 000.

179. Offences against accident and incident investigation under Part 11

A person who -

- (a) without lawful excuse, wilfully resists or otherwise obstructs a member or an investigator in the execution of powers or functions under Part 11;
- (b) knowingly gives false or misleading information at any investigation or public inquiry under Part 11;
- (c) makes a report in terms of section [111](#) or [112](#) that the person knows to be false or misleading; or
- (d) without lawful authority removes, conceals or withholds, or attempts to remove, conceal or withhold any part of an aircraft involved in an accident or incident, or any property on board an aircraft at the time of an accident or incident in breach of [section 115](#),

commits an offence and is liable to a fine not exceeding N\$100,000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Part 14 – SAFETY OFFENCES

180. Endangerment caused by holder of aviation document

A holder of an aviation document who, in respect of any activity or service to which the document relates, does or omits to do any act or causes or permits any act to be committed or omitted, and the act or omission causes unnecessary danger to any other person or to any property commits an offence and is liable -

- (a) in the case of an individual, to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment; or
- (b) in the case of a juristic person, to a fine not exceeding N\$500,000.

181. Operating aircraft in negligent manner

A person who operates an aircraft in a negligent manner commits an offence and is liable -

- (a) in the case of an individual, to a fine not exceeding N\$35 000 or to imprisonment for a period not exceeding two years, or both such fine and such imprisonment; or
- (b) in the case of a juristic person, to a fine not exceeding N\$175 000.

182. Dangerous activity involving aircraft, aeronautical product or aviation related service

- (1) A person who negligently or unnecessarily -

- (a) operates, maintains, or services; or
- (b) does any other act in respect of -

any aircraft, aeronautical product, or aviation related service, in a manner that endangers any other person or any property commits an offence.

- (2) A person who -
- (a) causes or permits any aircraft, aeronautical product, or aviation related service to be operated, maintained, or serviced; or
 - (b) causes or permits any other act to be done in respect of any aircraft, aeronautical product, or aviation related service,
- in a manner which causes unnecessary danger to any other person or to any property commits an offence.
- (3) A person who commits an offence in terms of subsection (1) or (2) is liable -
- (a) in the case of an individual, to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding two years, or both such fine and such imprisonment; or
 - (b) in the case of a juristic person, to a fine not exceeding N\$500,000.

183. Failure to comply with inspection or monitoring requirements

A person who, without reasonable excuse, fails to comply with any requirement of the Executive Director under [section 40](#)(1) or (3) commits an offence and is liable -

- (a) in the case of an individual, to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding two years and, if the offence is a continuing one, to a further fine not exceeding N\$10 000 for every day during which the offence is continued; or
- (b) in the case of a juristic person, to a fine not exceeding N\$500 000 and, if the offence is a continuing one, to a further fine not exceeding N\$100 000 for every day or part of a day during which the offence is continued.

184. Disqualification of holder of aviation document and imposition of conditions on holding of document for certain offences

- (1) In addition to any penalty a court may impose under [section 180](#), [182](#), [183](#) or [185](#), the Court may, on convicting a person of an offence against either of those sections -
- (a) disqualify the person from holding or obtaining an aviation document or a particular aviation document; or
 - (b) impose on any aviation document held by or issued to the person convicted such restrictions or conditions or both as the Court, having regard to the circumstances of the offence, thinks fit,
- for such period not exceeding 12 months as the court thinks fit.
- (2) Nothing in subsection (1) affects or prevents the Executive Director from exercising his or her powers under [section 68](#).

185. Acting without necessary aviation document

A person who -

- (a) operates, maintains, or services; or
- (b) does any other act in respect of,

any aircraft, aeronautical product, or aviation related service, either without holding the appropriate valid aviation document commits an offence and is liable -

- (i) in the case of an individual, to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding two years or, to both such fine and such imprisonment; or

- (ii) in the case of a juristic person, to a fine not exceeding N\$500 000.

186. Acting without required medical certificate

A person who exercises the privileges of any aviation document or operates an aircraft solo, and the person -

- (a) does not hold an appropriate valid medical certificate issued or granted recognition by the Executive Director under this Act;
- (b) knows or has reasonable grounds to suspect that he or she can no longer exercise safely the privileges to which his or her medical certificate relates; or
- (c) fails to comply with any conditions, restrictions, or endorsements imposed on a medical assessment or certificate by the Executive Director under this Act,

commits an offence and is liable to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

187. Making of fraudulent, misleading or false statements to obtain medical certificate

A person who makes or causes to be made -

- (a) a fraudulent, misleading, or false statement for the purpose of obtaining a medical certificate;
- (b) a fraudulent, misleading, or false entry in any logbook, record, form, or report that is required to be kept, made, or used to show compliance with any conditions, restrictions, or endorsements placed on any medical assessment or certificate;
- (c) a reproduction or alteration for fraudulent purposes of any medical assessment or certificate issued under this Act; or
- (d) a fraudulent, misleading, or false statement during an investigation conducted under this Act to determine whether a license holder -
 - (i) is able to exercise safely the privileges to which a medical certificate relates; or
 - (ii) has obtained his or her medical certificate fraudulently,

commits an offence and is liable to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

188. Failure to disclose information required by Executive Director

A person who, without reasonable excuse, fails to disclose information required by the Executive Director for the purposes of investigating or determining the changes in the medical condition of a license holder under this Act commits an offence and is liable to a fine not exceeding N\$25 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

189. Additional penalty for offences involving commercial gain

- (1) In addition to any penalty a court may impose under sections [180](#), [182](#), [183](#) or [185](#), the court, on convicting any person of an offence specified in any of those sections, may order the person to pay an amount not exceeding three times the value of any commercial gain resulting from the commission of the offence if the court is satisfied that the offence was committed in the course of producing a commercial gain.
- (2) For the purpose of subsection (1), the value of any gain is assessed by the court.

190. Effect of disqualification

- (1) Where the holder of an aviation document is disqualified by an order of a court from holding or obtaining an aviation document, the document -
 - (a) is deemed to be suspended while the disqualification continues in force;
 - (b) is of no effect during the period of suspension.
- (2) If the holder of an aviation document is disqualified from holding or obtaining a document, and the disqualification expires before the expiration of the term of the document, the document, on the expiration of the disqualification, continues to be of no effect until the holder -
 - (a) undergoes and passes such tests; and
 - (b) fulfils such requirements,as the Executive Director may specify.

191. Commencement of period of disqualification

Where an order is made disqualifying any person from holding or obtaining an aviation document, the period of disqualification commences on the date of the making of the order unless the court making the order directs the period of disqualification to commence on a later date.

192. Retention and custody of document

- (1) Where by an order of a court the holder of an aviation document is disqualified from holding or obtaining a document, the person in respect of whom the order is made, and whether or not demand is made, must forthwith surrender the document to the Executive Director.
- (2) Where an aviation document is so surrendered, the Executive Director must endorse the terms of the disqualification on the document and retain it until the disqualification has expired or been removed and the person entitled to the document has made a request in writing for its return.
- (3) If a person entitled to the document is the person to whom [section 190\(2\)](#) applies, the document may not be returned to the person until the person has passed the tests and fulfilled the requirements referred to in that section.

193. Removal of disqualification

- (1) Subject to this section, a person who by order of a court is disqualified for a period exceeding six months from holding or obtaining an aviation document may, after the expiration of six months after the date on which the order of disqualification became effective, apply to the court by which the order was made to remove the disqualification.
- (2) On an application under this section, the court, having regard to the character and conduct of the applicant subsequent to the order, the nature of the offence and any other circumstances of the case, may -
 - (a) remove the disqualification as from such date as may be specified in the order; or
 - (b) refuse the application.
- (3) Where the disqualification was ordered by a court, an application under this section is made to a judge exercising jurisdiction in the court by which the order was made.
- (4) A notice of an application under this section is served on the Executive Director who has the right to appear and be heard in respect of the matter.

194. Particulars of disqualification orders to be sent to Executive Director

Where a court makes an order -

- (a) disqualifying a person from holding or obtaining an aviation document;
- (b) imposing restrictions or conditions on any aviation document held by or issued to any person; or
- (c) removing any disqualification under [section 193](#),

the Registrar of the High Court must send particulars of the order to the Executive Director.

Part 15 – SECURITY OFFENCES**195. Application of this Part**

- (1) For the purposes of this Part “airport” has the meaning assigned to “aerodrome” in [section 1](#), and includes all areas comprising, and any defined area adjacent to, any airport in Namibia.
- (2) The offences in this Part are serious offences for the purposes of the Tokyo Convention.

196. Offences relating to safety and security of airports

A person who, whether in or outside Namibia, intentionally uses any device, substance, or weapon, that endangers or is likely to endanger the safety of an international airport or any other airport -

- (a) to commit an act of violence that causes or is likely to cause serious injury or death at the airport;
- (b) to destroy or seriously damage the facilities of the airport;
- (c) to destroy or seriously damage an aircraft that is not in service and is located at the airport; or
- (d) to disrupt the services of the airport,

commits an offence and is liable to -

- (i) imprisonment for a period not exceeding 14 years; or
- (ii) in the case where the conduct concerned is the same as conduct which constitutes under the laws of Namibia -
 - (aa) culpable homicide, a fine or imprisonment; or
 - (bb) murder, imprisonment not exceeding life imprisonment.

197. Offences under [section 196](#) deemed to be included in extradition treaties

- (1) For the purposes of the Extradition Act each offence described in [section 196](#) is deemed to be an offence described in any extradition agreement concluded before the commencement of this Act and for the time being in force between Namibia and any foreign country which is a party to the Montreal Convention and the Montreal Protocol.
- (2) When subsection (1) deems an offence to be an offence described in an extradition agreement, a person whose surrender is sought under the Extradition Act in respect of an act or omission which amounts to that offence is liable to be surrendered in accordance with that Act.
- (3) This section does not apply in respect of an act or omission that, had it occurred within the jurisdiction of Namibia, would not at that time have constituted an offence under the Namibian law.
- (4) A certificate given under the hand of the Minister that any foreign country is a party to the Montreal Protocol is sufficient evidence of that fact.

- (5) For the purposes of this section -
- “offence”, includes -
- (a) an attempt to commit such offence;
 - (b) aiding, abetting, inciting, counseling, or procuring a person to commit such offence;
 - (c) inciting, counseling, or attempting to procure a person to commit such offence when it is not in fact committed; and
 - (d) being an accessory after the fact to such offence; and
- “foreign country”, includes any territory for whose international relations the Government of a foreign country is responsible and to which the extradition treaty and the Montreal Protocol extends.

198. Acts contrary to public safety and order at airport

- (1) A person who negligently or unnecessarily acts in a manner that endangers any member of the public at an airport commits an offence.
- (2) A person who, while in an airport, and in a manner contrary to public order or safety at the airport -
- (a) uses any threatening, offensive or insulting words or gestures;
 - (b) behaves in a threatening, offensive or insulting manner;
 - (c) without justification makes an alarming statement or uses alarming words or behaves in an alarming manner contrary to good order at the airport;
 - (d) behaves in a manner that interferes with the performance of functions by aircrew, airline officials or airport workers; or
 - (e) behaves in a manner that interferes with or is likely to interfere with the performance of functions by police officers or aviation security officers,
- commits an offence.
- (3) A person convicted of an offence under -
- (a) subsection (1) or (2)(e) is liable to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment; or
 - (b) subsection (2)(a), (b) (c) or (d) is liable to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

199. Security restricted area offences

A person who, on being found in a security restricted area -

- (a) refuses to state his or her name, address, and authority to enter the security restricted area after -
 - (i) having been informed that he or she is in a security restricted area; and
 - (ii) having been requested by an aviation security officer to state those particulars; or
- (b) refuses forthwith to leave the security restricted area after having been ordered by an aviation security officer to do so,

commits an offence and is liable to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

200. Offence of impersonation or obstruction of authorised persons

A person who, not being an authorised person -

- (a) by words, conduct, demeanour, or by assuming the dress, name, designation, or description of an authorised person, holds himself or herself out as being an authorised person; or
- (b) wilfully obstructs, or incites or encourages any person to obstruct an authorised person in the execute of his or her functions,

commits an offence and is liable to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

201. Communicating false information affecting safety

A person who by any means provides to another person information relating to the safety of -

- (a) an aircraft, aerodrome, aeronautical product, aviation related service; or
- (b) any other facility or product used in or connected with aviation or any person associated therewith,

knowing the information to be false or providing it in a manner reckless as to whether it is false commits an offence and is liable -

- (i) in the case of an individual, to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment; or
- (ii) in the case of a juristic person, to a fine not exceeding N\$500 000.

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

A 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;
- (b) detains or keeps any cargo, baggage, mail or other goods which ought to have been delivered to another person or which has been found by himself or herself or by any other person; or
- (c) by false pretense or misstatement induces any person to deliver or dispose of such cargo, baggage, mail or other goods to him or her or to any other person who is not the intended addressee or recipient thereof,

commits an offence and liable to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

203. Prohibition of conveyance of firearms, drugs or animal products in aircraft

- (1) For the purposes of this section -

“animal product” means animal product as defined in section 1 of the Animal Health Act, 2011 (Act [No. 1 of 2011](#));

“drugs” means any drug as defined in the Abuse of Dependence–producing Substances and Rehabilitation Centres Act, 1971 (Act [No. 41 of 1971](#)), that has not been acquired, bought or possessed lawfully as contemplated in section 4 of that Act; and

“firearms” has the same meaning assigned by the Arms and Ammunition Act, but excludes any such firearms while they are being conveyed in an aircraft -

- (a) on behalf of the State;

- (b) by or on behalf of any person in his or her capacity as an officer or employee of the State; or
 - (c) for the purpose of the Defence Act, 2002 (Act [No. 1 of 2002](#)).
- (2) A person may not convey any conventional arms, drugs or animal product in an aircraft, except with the written permission -
 - (a) of the Minister or a person in the service of the State authorised by the Minister; and
 - (b) subject to such conditions as the Minister or such person may determine.
- (3) A person who contravenes subsection (2) commits an offence and is liable to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

204. Taking of firearms, ammunitions and other explosives onto aircraft or into security restricted area

- (1) A person who, without lawful authority or reasonable excuse, or without the permission of the owner or operator of the aircraft or of a person duly authorised by either of them to give such permission, takes or attempts to take on board any aircraft -
 - (a) any firearm;
 - (b) any other dangerous or offensive weapon or instrument of any kind whatsoever;
 - (c) any ammunition;
 - (d) any explosive substance or device, or any other injurious substance or device of any kind whatsoever which could be used to endanger the safety of the aircraft or of persons on board the aircraft;
 - (e) any imitation of an item or substance specified in paragraphs (a) to (d);
 - (f) any blunt, pointed or bladed item capable of being used to cause injury;
 - (g) any chemical, toxic, explosive or highly combustible substance posing a risk to the health of passengers or crew or the security or safety of aircraft;
 - (h) any property or object capable, or appearing capable, of discharging a projectile or causing injury, including any items that -
 - (i) are listed in, or classified in accordance with, the ICAO's Security Manual for Safeguarding International Civil Aviation Against Acts of Unlawful Interference; or
 - (ii) while not so listed or classified as specified in subparagraph (i), nevertheless have features or properties that in the opinion of the Executive Director might reasonably qualify them for listing or classification as prohibited items under the ICAO's Security Manual for Safeguarding International Civil Aviation Against Acts of Unlawful Interference or other document issued by ICAO after the commencement of this Act in replacement or substitution of the Security Manual for Safeguarding International Civil Aviation Against Acts of Unlawful Interference; or
 - (i) any other item as may be prescribed,commits an offence and is liable to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.
- (2) A person who, without lawful authority or reasonable excuse, or without the lawful permission of the aviation security service provider, takes or attempts to take into any sterile area or security restricted area -
 - (a) any firearm;

- (b) any other dangerous or offensive weapon or instrument of any kind whatsoever;
 - (c) any ammunition;
 - (d) any explosive substance or device, or any other injurious substance or device of any kind whatsoever which could be used to endanger the safety of the aircraft or of persons on board the aircraft;
 - (e) any imitation of an item or substance specified in paragraphs (a) to (d);
 - (f) any blunt, pointed or bladed item capable of being used to cause injury;
 - (g) any chemical, toxic, explosive or highly combustible substance posing a risk to the health of passengers or crew or the security or safety of aircraft;
 - (h) any property or object capable, or appearing capable, of discharging a projectile or causing injury, including any items that -
 - (i) are listed in, or classified in accordance with, the ICAO's Security Manual for Safeguarding International Civil Aviation Against Acts of Unlawful Interference; or
 - (ii) while not so listed or classified as specified in subparagraph (i), nevertheless have features or properties that in the opinion of the Executive Director might reasonably qualify them for listing or classification as prohibited items under the ICAO's Security Manual for Safeguarding International Civil Aviation Against Acts of Unlawful Interference or other document issued by ICAO after the commencement of this Act in replacement or substitution of the Security Manual for Safeguarding International Civil Aviation Against Acts of Unlawful Interference; or
 - (i) any other item as may be prescribed,
- commits an offence and is liable to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.
- (3) For the purposes of this section, "firearm" means any gun, rifle, or pistol, whether acting by force of explosives or not, and includes -
- (a) any such gun, rifle, or pistol which for the time being is not capable of discharging any shot, bullet, or other missile, but which by its completion or the replacement of any component part or parts or the correction or repair of any defect or defects, would be so capable; and
 - (b) any such gun, rifle, or pistol which is for the time being dismantled.
- (4) For the purposes of subsection (1) "lawful authority", "reasonable excuse" and "permission" is deemed to have been established in respect of any person who -
- (a) is a person, or a member of a class of persons, duly designated, authorised and approved in writing by the Executive Director to act on board any aircraft as an in-flight security officer; and
 - (b) takes any of the items in subsection (1)(a), (b), (c), (d), (e) or (f) on board any aircraft or into any security restricted area for the purposes of his or her functions as an in-flight security officer.

205. Hijacking

A person who, while on board an aircraft in flight, whether in or outside Namibia, unlawfully, by force or threat of force, or by any form of intimidation -

- (a) seizes or exercises control; or
- (b) attempts to seize or exercise control,

of the aircraft commits the offence of hijacking and is liable to life imprisonment.

206. Offences in connection with hijacking

- (1) A person who, while on board an aircraft in flight outside Namibia, does or omits anything which, if done or omitted by the person in Namibia, would be an offence, commits such offence if the act or omission occurred in connection with the offence of hijacking.
- (2) Without limiting the generality of subsection (1), an act or omission by any person is deemed to occur in connection with the offence of hijacking if it was done or omitted with intent -
 - (a) to commit or facilitate the commission of the offence of hijacking;
 - (b) to avoid the detection of himself or herself or of any other person in the commission of the offence of hijacking; or
 - (c) to avoid the arrest or facilitate the flight of himself or herself or of any other person upon the commission of the offence of hijacking.

207. Other offences relating to aircraft

- (1) A person who, whether in or outside Namibia -
 - (a) on board an aircraft in flight, commits an act of violence which is likely to endanger the safety of the aircraft;
 - (b) destroys an aircraft in service;
 - (c) causes damage to an aircraft in service which renders the aircraft incapable of flight or which is likely to endanger the safety of the aircraft in flight;
 - (d) places or causes to be placed on an aircraft in service anything which is likely to destroy the aircraft, or to cause damage to the aircraft which renders it incapable of flight, or which is likely to endanger the safety of the aircraft in flight;
 - (e) destroys, damages, or interferes with the operation of any air-navigation facility used in international air navigation, where the destruction, damage, or interference is likely to endanger the safety of an aircraft in flight;
 - (f) endangers the safety of an aircraft in-flight by communicating to any other person any information which the person supplying the information knows to be false; or
 - (g) uses, or causes to be used, an aircraft in-flight with intent to cause -
 - (i) death or serious bodily injuries to any person;
 - (ii) serious damage to any aircraft in-flight or on the ground or to any other property of any kind wherever situated;
 - (iii) or with intent to cause serious damage or destruction to the environment,commits an offence and is liable to imprisonment for a period not exceeding 14 years.
- (2) A person who is convicted of an offence under subsection (1)(a), (b), (c), (d), (e) or (g), in circumstances where the conduct concerned is the same as -
 - (a) a conduct which constitutes culpable homicide under the common law of Namibia, is liable to a fine or imprisonment or both such fine and such imprisonment; or
 - (b) a conduct which constitutes murder under the common law of Namibia, is liable to imprisonment not exceeding life imprisonment.

208. Offence of hijacking deemed to be included in extradition treaties

- (1) For the purposes of section (3) of the Extradition Act, the offence of hijacking, if not already described in an extradition agreement, is deemed to be -
 - (a) an extraditable offence; and
 - (b) an offence described in any extradition agreement for the time being in force between Namibia and any country that is a party to the Hague Convention.
- (2) For the purposes of the Extradition Act, each offence in [section 207](#) if not already described in an extradition agreement, is deemed to be -
 - (a) an extraditable offence for the purposes of that Act; and
 - (b) an offence described in any extradition treaty for the time being in force between Namibia and any country that is a party to the Montreal Convention or any other country that is not a party.
- (3) If, under subsection (1) or subsection (2), an offence is deemed to be -
 - (a) an offence described in an extradition agreement; or
 - (b) a relevant offence for the purposes of section 3 of the Extradition Act,a person may be surrendered for such offence in accordance with the Extradition Act.
- (5) For the purposes of this section -

“country”, includes any territory for whose international relations the Government of a country is responsible and to which the extradition treaty and the Hague Convention or the Montreal Convention extends; and

“offence”, includes -

 - (a) aiding, abetting, inciting, counseling, or procuring any person to commit the offence;
 - (b) inciting, counseling, or attempting to procure any person to commit the offence when it is not in fact committed; and
 - (c) being an accessory after the fact to the offence.
- (6) A certificate by the Minister that a country is a party to the Hague Convention or Montreal Convention is sufficient evidence of that fact.

209. Application of sections [205](#) and [206](#)

- (1) Nothing in section [205](#) or [206](#) applies, if both the place of take-off and the place of actual landing of the aircraft, not being a Namibian aircraft, are -
 - (a) in the territory of the country in which the aircraft is registered; or
 - (b) in the case of an aircraft that is subject to joint or international registration, in the territory of one of the countries having an interest in the aircraft, unless -
 - (i) the alleged offender is a Namibian citizen or a person ordinarily resident in Namibia;
 - (ii) the act or omission occurred in Namibia;
 - (iii) the alleged offender is present in Namibia; or
 - (iv) the aircraft is leased without crew to the lessee -
 - (aa) whose principal place of business is in Namibia; or

- (bb) in any other case, who is a Namibian citizen or a person ordinarily resident in Namibia.
- (2) Nothing in section [205](#), [206](#) or [207](#) applies to aircraft used in military, customs, or police service, unless -
 - (a) the alleged offender is a citizen of Namibia or a person ordinarily resident in Namibia; or
 - (b) the act or omission occurred in Namibia.

210. Application of certain provisions relating to jurisdiction in respect of offences on aircraft beyond Namibia and relating to Prevention and Combating of Terrorist and Proliferation Activities Act

- (1) Nothing in this Act or any other law of Namibia relating to the jurisdiction in respect of offences on ships or aircraft beyond Namibia may limit the application of -
 - (a) this Act;
 - (b) the Prevention and Combating of Terrorist and Proliferation Activities Act; or
 - (c) the criminal law of Namibia with respect to -
 - (i) the offence of hijacking; or
 - (ii) any of the offences described in sections [206](#) and [207](#) committed in connection with the offence of hijacking.
- (2) The offences described in -
 - (a) [section 196](#), which relate to acts of violence and destruction at an airport;
 - (b) [section 201](#), which relate to communicating false information affecting safety;
 - (c) [section 204](#), which relate to taking firearms, ammunitions and other explosives, on to aircraft or into a security restricted area;
 - (d) [section 205](#), which relate to hijacking; and
 - (e) [section 207](#), which relate to other offences related to aircraft, including destroying aircraft and air navigation facilities,

apply independently of, and without prejudice to, the application of the offences set out in section 5 of the Prevention and Combating of Terrorist and Proliferation Activities Act.

Part 16 – UNRULY PASSENGER OFFENCES

211. Application of this Part

- (1) This Part applies to any unruly passenger offence committed -
 - (a) on an aircraft in Namibia, regardless of the nationality of the aircraft;
 - (b) outside Namibia on an aircraft in flight, regardless of the nationality of the aircraft, if the next landing of the aircraft is in Namibia; or
 - (c) on an aircraft in flight whether inside or outside Namibia if that aircraft is either -
 - (i) registered in Namibia; or
 - (ii) leased to an operator whose principal place of business or permanent residence is in Namibia.

- (2) For the purposes of this Part an aircraft is in flight from the time when all its external doors are closed after embarkation until the time when any external door is opened for disembarkation.
- (3) Despite subsection (2), in the case of a forced landing an aircraft is in flight until -
 - (a) the time when the competent authorities of the country in which the forced landing takes place; or
 - (b) in the case of a forced landing in a place that is not within the territorial limits of any country, the competent authorities of any country assume responsibility for the aircraft and for persons and property on board the aircraft.
- (4) The offences in this Part are deemed to be serious offences for the purposes of the Tokyo Convention.

212. Liability for unruly passenger offences despite extraterritoriality

A person who commits an act or omission on an aircraft in flight outside Namibia that would be an offence under this Part if it occurs within Namibia is, subject to this Act, liable as if the act or omission had occurred in Namibia.

213. Liability for other offences despite extraterritoriality

- (1) A person who commits an act or omission on an aircraft in flight outside Namibia that would, if it occurred in Namibia, be an offence of disorderly behaviour or fighting in a public place or common assault or willful damage or indecent exposure is liable as if the act or omission had occurred in Namibia.
- (2) For the purposes of subsection (1), a reference to a “public place”, includes an aircraft.

214. Acts endangering aircraft or persons in aircraft

A person who acts in a manner that endangers an aircraft or any person in an aircraft commits an offence and is liable to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

215. Disruptive conduct towards crew members

A person who, while in an aircraft -

- (a) uses any threatening, offensive, or insulting words towards a crew member;
 - (b) behaves in a threatening, offensive, insulting, or disorderly manner towards a crew member;
 - (c) behaves in a manner that interferes with the performance by a crew member of his or her functions; or
 - (d) intentionally interferes with the performance by a crew member of his functions,
- commits an offence and is liable -
- (i) in case of paragraphs (a) to (c), inclusive, to a fine not exceeding N\$25 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment; or
- [There is no paragraph (ii) in the Government Gazette.]**
- (iii) in case of paragraph (d), to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

216. Interference with aircraft

A person who tampers or interferes with any aircraft, any component of an aircraft, or its equipment, including, smoke detectors commits an offence and is liable to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

217. Intoxicated persons on aircraft

- (1) A person, except a person under medical care, who -
 - (a) is intoxicated and boards an aircraft; or
 - (b) becomes intoxicated on an aircraft,commits an offence and is liable -
 - (i) in case of paragraph (a), to a fine not exceeding N\$25 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment; or
 - (ii) in case of paragraph (b), to a fine not exceeding N\$15 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.
- (2) For the purposes of this section, a person is intoxicated if the pilot-in-command, or senior flight attendant authorised by the pilot-in-command for this purpose, has reasonable grounds to believe that the person is under the influence of an intoxicating liquor, or substance to such an extent as to -
 - (a) be incapable of properly conducting himself or herself;
 - (b) present a hazard or potential hazard to the aircraft or to persons on the aircraft; or
 - (c) offend against the good order and discipline required on an aircraft.
- (3) For the purposes of this section, “person under medical care” means a person who -
 - (a) is under the supervision of an attendant; and
 - (b) has become intoxicated as a result of taking prescription medication in accordance with a medical authorisation.

218. Non-compliance with commands given by pilot-in command

A person who fails to comply with any commands -

- (a) directly given to the person by the pilot-in command; or
- (b) indirectly given to the person by the pilot-in-command through a crew member, in accordance with his or her functions in terms of [section 71](#),

commits an offence and is liable to a fine not exceeding N\$25 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

219. Offensive behaviour or words

A person who, on any aircraft -

- (a) behaves in a threatening, offensive, insulting, or disorderly manner; or
- (b) uses threatening, offensive, or insulting words,

commits an offence and is liable to a fine not exceeding N\$12 500 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

220. Portable electronic devices not to be operated

A person who operates a portable electronic device on board an aircraft in contravention of this Act commits an offence and is liable to a fine not exceeding N\$12 500 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

221. Non-compliance with seating and seatbelt instructions

A person who fails to comply with an instruction given by a crew member, passenger information signs, or placards to -

- (a) occupy a seat or berth; and
- (b) fasten and keep fastened about the person any installed safety belt or safety harness,

commits an offence and is liable to a fine not exceeding N\$12 500 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

222. No smoking on board aircraft carrying passengers

- (1) A person on board any aircraft that is carrying passengers for hire and reward on any internal or international flight who smokes when instructed not to smoke by -

- (a) a crew member; or
- (b) a passenger information notice, sign, or placard,

commits an offence and is liable to a fine not exceeding N\$12 500 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

- (2) In this section “smoke” means to smoke, hold, or otherwise have control over an ignited tobacco product, weed or plant.

223. Dangerous goods on aircraft

A person who carries or causes to be carried on an aircraft any dangerous goods in contravention of this Act commits an offence and is liable to a fine not exceeding N\$12 500 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

Part 17 – RIGHTS OF APPEAL**224. Appeals against disqualification**

- (1) An order of the High Court by which a person is disqualified from holding or obtaining an aviation document comes into effect forthwith.
- (2) A person who is disqualified by an order of the High Court from holding or obtaining an aviation document may appeal to the Supreme Court against the refusal.
- (3) If a notice of appeal against an order disqualifying a person from holding or obtaining an aviation document is filed, the High Court, if it thinks fit, may defer the operation of the order pending the appeal.
- (4) Where application is made to the High Court for leave to appeal to the Supreme Court against a decision of the High Court that is, or includes, an order of disqualification, the High Court, if it thinks fit, may defer the operation of the order pending the application for leave to appeal and, if leave is granted, pending the appeal.

- (5) Where an appeal to the High Court or Supreme Court is allowed under this section, whether in whole or in part, the Registrar of the High Court must send a notice thereof to the Executive Director.
- (6) In determining the expiration of the period for which a person is disqualified from holding or obtaining an aviation document, any time during which the operation of the disqualification order is deferred under this section is disregarded.

225. Appeal to High Court

- (1) A person may appeal to the High Court against a specified decision made by the Executive Director under this Act if the person has the right to appeal under this Act, and -
 - (a) the person -
 - (i) is a person in respect of whom the decision was made; and
 - (ii) is dissatisfied with the decision; or
 - (b) the person is the owner, operator, or person for the time being in charge of an aircraft or aeronautical product that is the subject of the decision.
- (2) The High Court may confirm, reverse, or modify the decision appealed against.
- (3) A decision of the Executive Director appealed against under this section continues in force pending the determination of the appeal, and no person is excused from complying with any provision of this Act on the ground of a pending appeal.
- (4) Even though an appeal under this section may have been determined in favour of the appellant, the Executive Director may, subject to any right of appeal -
 - (a) refuse to grant;
 - (b) revoke, suspend, disqualify; or
 - (c) in accordance with this Act, otherwise deal with -
 - (i) any aviation document;
 - (ii) any person to whom the appeal is related; or
 - (iii) any aviation document granted or restored in compliance with the decision of the High Court on appeal,on any sufficient grounds supported by facts or evidence discovered after the hearing of the appeal.
- (5) In this section, a “specified decision” is a decision -
 - (a) concerning the grant, issue, revocation, or suspension of an aviation document;
 - (b) to impose conditions on an aviation document;
 - (c) to exercise powers under [section 47](#); or
 - (d) to decline to register an aircraft under [section 70](#).

226. Appeal to Supreme Court on question of law

- (1) A party to an appeal under [section 225](#) may, with the leave of the High Court, or if that leave is declined, with special leave of the Supreme Court, appeal to the Supreme Court on a question of law.
- (2) On any appeal under subsection (1), the Supreme Court may make such order or determination as it thinks fit.

- (3) The decision of the Supreme Court on an appeal under this Act, or on any application for leave to appeal to that Court is final.
- (4) Subject to this section, the procedure in respect of any appeal under this section is in accordance with the Rules of the High Court.

Part 18 – GENERAL PROVISIONS

227. Technical standards for civil aviation

- (1) The Executive Director may issue technical standards for civil aviation on such matters as may be prescribed.
- (2) The manner in which a technical standard for civil aviation may be issued, amended or withdrawn, and the procedure to be followed in respect of any such issue, amendment or withdrawal is as prescribed.
- (3) The Executive Director may incorporate into a technical standard any international aviation standard or any amendment, without publishing the text of such standard or amendment, by mere reference -
 - (a) to the title, number and year of issue of such standard or amendment; or
 - (b) to any other particulars by which such standard or amendment is sufficiently identified.
- (4) A staff member in the Authority designated by the Executive Director for such purpose must -
 - (a) 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 (3); and
 - (b) at the request in writing by any interested person, make such copy available free of charge to such person for inspection, or for making a copy at the expense of such person, at a place approved by the staff member.
- (5) 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 (3) any document purporting to be a statement by a person who in the statement alleges -
 - (a) that he or she is a person in the service of the Authority; and
 - (b) that a particular writing described in or attached to the statement contains the text, is, on its mere production at such proceedings by any person, proof of the facts stated therein.
- (6) For the purposes of this section, “international aviation standard” means -
 - (a) any international standard or recommended practice or procedure adopted by the ICAO for the purposes of Article 37 of the Chicago Convention;
 - (b) any standard, rule or requirement prescribed by the law of any other Contracting State of the ICAO; or
 - (c) any other technical standards.

228. Evidence and proof

- (1) In any proceedings for an offence against this Act, the following provisions apply -
 - (a) a copy of any aviation document which is certified correct by the Executive Director is sufficient, in the absence of proof to the contrary, to prove such document;

- (b) evidence of the contents of the Namibia Register of Aircraft maintained under [section 50](#) may be given by a certificate signed by the Executive Director and every such certificate is sufficient proof of the matters stated in it, until the contrary is proved;
 - (c) the production of a certificate signed by the Executive Director to the effect that on a specified date a person or organisation was or was not the holder of any aviation document or any specified type of aviation document is sufficient proof of the matter certified, until the contrary is proved;
 - (d) the production of a written statement signed by the Executive Director to the effect that on a specified date a person was or was not the holder of a current medical certificate issued or granted recognition under this Act, or otherwise validated or issued or recognized before the commencement of this Act, is sufficient proof of the matter stated, until the contrary is proved;
 - (e) it is presumed that every certificate purporting to have been certified or given under this section has been certified or given by the Executive Director, until the contrary is proved; and
 - (f) a licence granted under this Act may be proved by the production of a copy of such licence certified to be correct by the Executive Director.
- (2) Without limiting any other method of proof, the production in any proceedings of a copy of -
- (a) a regulation purporting to have been made by the Minister under Part 8; or
 - (b) an emergency regulation purporting to have been made by the Executive Director under [section 59](#),
- is sufficient proof of such regulation and of the fact that it has been made in accordance with that Part, in the absence of proof to the contrary.

229. Evidence of air traffic services provider

- (1) A document used in recording services in relation to the movement of any aircraft and purporting to have been initiated at the time of the movement by an employee of an air traffic services provider is admissible in -
- (a) any court; and
 - (b) any judicial examination or proceedings,
- as prima facie evidence that the air traffic services described in such document were provided on the date and for the aircraft referred to in the document.
- (2) A document certified by an employee of an air traffic services provider purporting to be a computer record of the provision of air traffic services, the particulars of which have been recorded or stored in the usual and ordinary course of the business of such person, is admissible as if it were a document to which subsection (1) applies.
- (3) For the purposes of this section, the expression “computer record”, includes a microfiche, a microfiche printout, a computer printout, or any other document produced by a device by means of which information is recorded or stored.

230. Obligation to identify pilot-in-command

- (1) If a pilot in command of an aircraft is alleged to have committed an offence under this Act, the Executive Director or a police officer may -
- (a) inform the operator of the aircraft or the holder of the certificate of registration for the aircraft of the alleged offence; and

- (b) require the operator of the aircraft or the holder of the certificate of registration for the aircraft to give all information in his or her possession or reasonably obtainable by him or her that may lead to the identification of the pilot.
- (2) A request under subsection (1) may be made orally or in writing, and the operator or holder of the certificate of registration must comply with the request within 10 working days.
- (3) Subsection (1) does not apply if the operator or holder of the certificate of registration has been arrested or detained in relation to the same suspected offence.

231. Exemption of aircraft from seizure on patent claims

- (1) A lawful entry into Namibia, or a lawful transit across Namibia, with or without landings, of an aircraft to which this section applies may not entail -
 - (a) any seizure or detention of the aircraft;
 - (b) any proceedings being brought against the owner or operator thereof; or
 - (c) any other interference therewith,by or on behalf of any person in Namibia on the ground that the construction, mechanism, parts, accessories or operation of the aircraft is or are an infringement of any patent, design or model.
- (2) Subject to subsection (3), the importation into and storage in Namibia of spare parts and spare equipment for an aircraft to which this section applies and the use and installation thereof in the repair of such an aircraft may not entail -
 - (a) any seizure or detention of the aircraft or of the spare parts or spare equipment;
 - (b) any proceedings being brought against the owner or operator of the aircraft or the owner of the spare parts or spare equipment; or
 - (c) any other interference with the aircraft,by or on behalf of any person in Namibia on the ground that the spare parts or spare equipment or their installation are or is an infringement of any patent, design or model.
- (3) Subsection (2) does not apply in relation to any spare parts or spare equipment which are sold or distributed in Namibia or are exported from Namibia for sale or distribution.
- (4) This section applies -
 - (a) to an aircraft registered in a contracting state other than an aircraft used in military, customs or police services; and
 - (b) to such other aircraft as the Minister may specify by notice in the Gazette.

232. Nuisance, trespass and responsibility for damage

- (1) No action for nuisance may be brought in respect of the noise or vibration caused by aircraft or aircraft engines on an aerodrome, if the noise or vibration is of a kind specified in any regulation made under section [54](#), [55](#) or [58](#), so long as the regulation is duly complied with.
- (2) No action may lie in respect of trespass, or in respect of nuisance, by reason only of the flight of aircraft over any property at a height above the ground which having regard to wind, weather, and all the circumstances of the case is reasonable, so long as this Act is duly complied with.
- (3) Where material damage or loss is caused to property on land or water by -
 - (a) an aircraft in flight, taking off, landing, or alighting; or

- (b) any person or article in or falling from any such aircraft,
damages are recoverable from the owner of the aircraft, without proof of negligence or intention or other cause of action, as if the damage or loss was caused by his or her fault, except where the damage or loss was caused by or contributed to by the fault of the person by whom the same was suffered.
- (4) Where damage or loss is caused in the manner described in subsection (3) and in circumstances in which -
 - (a) damages are recoverable from the owner of the aircraft in respect of the damage or loss by virtue only of subsection (3); and
 - (b) some person other than the owner is liable to pay damages in respect of the damage or loss, the owner is entitled to be indemnified by the other person against any claim in respect of the damage or loss.
- (5) Where damage or loss is contributed to by the fault of the person by whom the same was suffered, the law relating to apportionment in respect of contributory negligence applies.
- (6) Damages are not recoverable under subsection (4) from the owner of an aircraft in respect of damage or loss caused by a person descending from the aircraft by parachute, unless the descent is required to avoid injury or death.
- (7) Where damages are recoverable from the person descending, subsection (4) applies, with the necessary modifications, as if the person descending were the owner of the aircraft.
- (8) Where an aircraft has been hired out to any other person by the owner thereof, for a period greater than 28 days and no pilot, commander, navigator, or operative member of the crew of the aircraft is in the employment of the owner, this section applies as though every reference to the owner were a reference to the person to whom the aircraft has been so hired out.
- (9) For the purposes of this section, "fault" means negligence, breach of statutory duty, or other act or omission which gives rise to a liability in delict or would, apart from any statutory provision in respect of contributory negligence, give rise to the defence of contributory negligence.

233. Penalties

A person who commits an offence under this Act for which no penalty is specifically provided is liable to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

234. Act binds State

This Act binds the State.

235. Repeal and amendment of laws

The laws set out in Column 1 of Schedule 7 to this Act are repealed or amended to the extent set out in Column 3 of that Schedule.

236. Saving and transitional provisions

- (1) A licence, a rating, a certificate, a permit, an authorisation, an approval or other document validly issued by an authorised staff member of the Directorate of Civil Aviation -
 - (a) prior to the commencement of this Act;
 - (b) under the repealed Civil Aviation Act, 1962; and

- (c) in force at the commencement of this Act,
- is deemed to be an aviation document issued under this Act and accordingly continues to be in force for period of 24 months from the date of the commencement of this Act, unless its date of expiry precedes the expiry of the 24 months period in which case the licence, rating, certificate, permit, authorisation approval or other document expires on its current date of expiry.
- (2) A regulation or standard made, a circular, order or directive issued, or any other thing done or purported to have been done under a provision of a law repealed by [section 235](#), and which could be made, issued or done under a corresponding provision of this Act, is deemed to have been made, issued or done under that corresponding provision.
- (3) A matter that is in the course of being investigated, or that has been investigated by the Directorate pursuant to the law repealed by [section 235](#), but on which a report has not been made at the commencement of this Act, is continued and finalized by the Directorate as if it had been an investigation under this Act.
- (4) A reference in a law repealed by [section 235](#) or in anything made, issued or done under that law to the “Executive Director” or the “Directorate” is deemed to refer to the “Executive Director” or the “Authority” appointed or established under or by this Act.

237. Short title and commencement

This Act is called the Civil Aviation Act, 2016 and commences on the date determined by the Minister by notice in the Gazette.

[This section is incorrectly numbered as “236” in the Government Gazette, but correctly numbered as “237” in the Act’s ARRANGEMENT OF SECTIONS. The numbering has been corrected here to avoid confusion.]

Schedule 1

CONVENTION ON INTERNATIONAL CIVIL AVIATION, SIGNED AT CHICAGO, ON 7 DECEMBER 1944 (CHICAGO CONVENTION)

[Section 1 of the Act states: “Chicago Convention” means the Convention on International Civil Aviation signed in Chicago on 7 December 1944, and adopted by section 1 of the Aviation Amendment Act, 1947 (Act No. 42 of 1947), and contained in Schedule 1, and includes - (a) any amendment to the Convention that has entered into force under Article 94(a) of the Convention and has been ratified by Namibia; and (b) any Annex or amendment to any Annex accepted under Article 90 of the Convention, to the extent ratified by Namibia; and (c) the international standards and procedures adopted and amended by the International Civil Aviation Organisation under Article 37 of the Convention, but subject to any notification of differences by Namibia pursuant to Article 38 of the Convention; The text of this Schedule is identical to the 6th version of the Convention on International Civil Aviation done at Chicago on the 7th day of December 1944, published in 1980 which can be found at www.icao.int/publications/Documents/7300_6ed.pdf. The 6th version of the Convention incorporates all the amendments to the Convention which were in force as of 31 March 1980 (as the online Foreword to that version of the text explains). However, the 6th version of the Convention incorporates the following Protocols which Namibia has not yet accepted and which are thus not binding on Namibia as a matter of international law: Protocol Relating to an Amendment to the Convention on International Civil Aviation [Article 93bis], Montreal, 1947, which entered into force internationally on 20 March 1961 (source: ICAO) Protocol Relating to an Amendment to the Convention on International Civil Aviation [Article 45], Montreal, 1954 which entered into force internationally on 16 May 1958 (source: ICAO) Protocol Relating to certain Amendments to the Convention on International Civil Aviation [Articles 48(a), 49(e) and 61], Montreal, 1954 which entered into force internationally on 12 December 1956 (source: ICAO) Protocol Relating to an Amendment to the Convention on International Civil Aviation [Article 48(a)], Rome, 1962, which entered into force internationally on 11 September 1975 (source: ICAO) All of these Protocols entered

into force internationally prior to Namibia becoming a party to the underlying Convention. However, they contain provisions specifying that the amendments shall only enter into force for states attempting to become a party subsequent to their entry into force internationally upon deposit of an instrument of acceptance with ICAO. According to the ICAO-Secretariat, Namibia has not yet deposited any such instruments of acceptance. (See www.icao.int/secretariat/legal/Status%20of%20individual%20States/namibia_en.pdf.) Thus, these Protocols are not yet binding on Namibia as a matter of international law.

Furthermore, the 6th version of the Convention reproduced in the Gazette does not incorporate the following amendments to which Namibia is party and which have entered into force internationally (listed in chronological order by date of entry into force internationally): Protocol relating to an Amendment to the Convention (Article 83bis), Montreal, 1980 (acceptance by Namibia: 19 December 2005; entry into force internationally: 20 June 1997) Protocol relating to an Amendment to the Convention (Article 3bis), Montreal, 1984 (acceptance by Namibia: 19 December 2005; entry into force internationally: 1 October 1998) Protocol relating to an Amendment to the Convention (Final Clause, Russian Text), Montreal, 1977 (acceptance by Namibia: 27 September 2001; entry into force internationally: 17 August 1999) Protocol on the Authentic Quadrilingual Text of the Convention, Montreal, 1977 (acceptance Namibia: 19 October 2001; entry into force internationally: 16 September 1999) Protocol relating to an Amendment to the Convention (Article 50(a)), Montreal, 1990 (acceptance by Namibia: 27 September 2001; entry into force internationally: 28 November 2002) Protocol relating to an Amendment to the Convention (Article 56), Montreal, 1989 (acceptance by Namibia: 27 September 2001; entry into force internationally: 18 April 2005). It should be noted that there have to date been several protocols amending Article 56 of the Convention with the aim of increasing the number of Air Navigation Commission members. Namibia is party only to the latest Protocol of 1989 (listed above), which effectively supersedes the earlier ones. Similarly, there have been four protocols to date amending Article 50a of the Convention with the aim of steadily increasing the number of ICAO Council members (from an increase to 27 members by the 1961 Protocol to the latest increase to 36 members by the 1990 Protocol). Namibia is party only to the latest Protocol of 1990 (listed above), which effectively supersedes the earlier ones.

Namibia has also accepted four additional protocols which have not yet entered into force internationally and so are not yet relevant to the Schedule.

The version of the Convention which incorporates all of the amendments applicable to Namibia as of the date on which the Civil Aviation Act 6 of 2016 was promulgated would be the 9th version of the Convention, published in 2006, which incorporates all the amendments made to the Convention which were in force as of 1 January 2006. Thus, Schedule 1 should contain the text of the 9th version of the Convention; only this version incorporates “any amendment to the Convention that has entered into force under Article 94(a) of the Convention and has been ratified by Namibia”, as required by the definition of the “Chicago Convention” in section 1 of the Act. However, the 9th version of the Convention would apply to Namibia without the four protocols listed above which Namibia has not accepted. The relevant changes are indicated in the annotation notes below.

The depositary of the Convention is the Government of the United States of America, which does not make the actual Convention text publicly available. Therefore, the Schedule has been compared to the 9th version of the text publicised by the ICAO as the administering secretariat at www.icao.int/publications/Documents/7300_cons.pdf.

Note that it should be possible to access future versions of the Convention at www.icao.int/publications/Pages/doc7300.aspx.]

PREAMBLE

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

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

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

Have accordingly concluded this Convention to that end.

Part I – AIR NAVIGATION

Chapter I

GENERAL PRINCIPLES AND APPLICATION OF THE CONVENTION

Article 1 – Sovereignty

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

Article 2 – Territory

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

Article 3 – Civil and state aircraft

[Obvious format error in heading corrected.]

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

[The Protocol relating to an Amendment to the Convention on International Civil Aviation (Article 3bis), Montreal, 1984, accepted by Namibia, amends the Convention by adding an Article 3bis:

(a) The contracting States recognize that every State must refrain from resorting to the use of weapons against civil aircraft in flight and that, in case of interception, the lives of persons on board and the safety of aircraft must not be endangered. This provision shall not be interpreted as modifying in any way the rights and obligations of States set forth in the Charter of the United Nations.

(b) The contracting States recognize that every State, in the exercise of its sovereignty, is entitled to require the landing at some designated airport of a civil aircraft flying above its territory without authority or if there are reasonable grounds to conclude that it is being used for any purpose inconsistent with the aims of this Convention; it may also give such aircraft any other instructions to put an end to such violations. For this purpose, the contracting States may resort to any appropriate means consistent with relevant rules of international law, including the relevant provisions 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.”]

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

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 – Schedules 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 – Cabotage

Each contracting State shall have the right to refuse permission to the aircraft of other contracting States to take on in its territory passengers, mail and cargo carried for remuneration or hire and destined for another point within its territory. Each contracting State undertakes not to enter into any arrangements which specifically grant any such privilege on an exclusive basis to any other State or an airline of any other State, and not to obtain any such exclusive privilege from any other State.

Article 8 – Pilotless aircraft

No aircraft capable of being flown without a pilot shall be flown without a pilot over the territory of a contracting State without special authorization by that State and in accordance with the terms of such authorization. Each contracting State undertakes to insure that the flight of such aircraft without a pilot in regions open to civil aircraft shall be so controlled as to obviate danger to civil aircraft.

Article 9 – Prohibited areas

- (a) Each contracting State may, for reasons of military necessity or public safety, restrict or prohibit uniformly the aircraft of other States from flying over certain areas of its territory, provided that no distinction in this respect is made between the aircraft of the State whose territory is involved, engaged in international scheduled airline services, and the aircraft of the other contracting States likewise engaged. Such prohibited areas shall be of reasonable extent and location so as not to interfere unnecessarily with air navigation. Descriptions of such prohibited areas in the territory of a contracting State, as well as any

subsequent alterations therein, shall be communicated as soon as possible to the other contracting States and to the International Civil Aviation Organization.

- (b) Each contracting State reserves also the right, in exceptional circumstances or during a period of emergency, or in the interest of public safety, and with immediate effect, temporarily to restrict or prohibit flying over the whole or any part of its territory, on condition that such restriction or prohibition shall be applicable without distinction of nationality to aircraft of all other States.
- (c) Each contracting State, under such regulations as it may prescribe, may require any aircraft entering the areas contemplated in subparagraphs (a) or (b) above to effect a landing as soon as practicable thereafter at some designated airport within its territory.

Article 10 – Landing at customs airport

Except in a case where, under the terms of this Convention or a special authorization, aircraft are permitted to cross the territory of a contracting State without landing, every aircraft which enters the territory of a contracting State shall, if the regulations of that State so require, land at an airport designated by that State for the purpose of customs and other examination. On departure from the territory of a contracting State, such aircraft shall depart from a similarly designated customs airport. Particulars of all designated customs airports shall be published by the State and transmitted to the International Civil Aviation Organization established under Part II of this Convention for communication to all other contracting States.

Article 11 – Applicability of air regulations

Subject to the provisions of this Convention, the laws and regulations of a contracting State relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of all contracting States without distinction as to nationality, and shall be complied with by such aircraft upon entering or departing from or while within the territory of that State.

Article 12 – Rules of the air

Each contracting State undertakes to adopt measures to insure that every aircraft flying over or maneuvering 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 maneuver of aircraft there in force. Each contracting State undertakes to keep its own regulations in these respects uniform, to the greatest possible extent, with those established from time to time under this Convention. Over the high seas, the rules in force shall be those established under this Convention. Each contracting State undertakes to insure the prosecution of all persons violating the regulations applicable.

Article 13 – Entry and clearance regulations

The laws and regulations of a contracting State as to the admission to or departure from its territory of passengers, crew or cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs, and quarantine shall be complied with by or on behalf of such passengers, crew or cargo upon entrance into or departure from, or while within the territory of that State.

Article 14 – Prevention of spread of disease

Each contracting State agrees to take effective measures to prevent the spread by means of air navigation of cholera, typhus (epidemic), smallpox, yellow fever, plague, and such other communicable diseases as the contracting States shall from time to time decide to designate, and to that end contracting States will keep in close consultation with the agencies concerned with international regulations relating to sanitary measures applicable to aircraft. Such consultation shall be without prejudice to the application of any existing international convention on this subject to which the contracting States may be parties.

Article 15 – Airport and similar charges

Every airport in a contracting State which is open to public use by its national aircraft shall likewise, subject to the provisions of Article 68, be open under uniform conditions to the aircraft of all the other contracting States. The like uniform conditions shall apply to the use, by aircraft of every contracting State, of all air navigation facilities, including radio and meteorological services, which may be provided for public use for the safety and expedition of air navigation.

Any charges that may be imposed or permitted to be imposed by a contracting State for the use of such airports and air navigation facilities by the aircraft of any other contracting State shall not be higher,

- (a) As to aircraft not engaged in scheduled international air services, than those that would be paid by its national aircraft of the same class engaged in similar operations, and
- (b) As to aircraft engaged in scheduled international air services, than those that would be paid by its national aircraft engaged in similar international air services.

All such charges shall be published and communicated to the International Civil Aviation Organization: provided that, upon representation by an interested contracting State, the charges imposed for the use of airports and other facilities shall be subject to review by the Council, which shall report and make recommendations thereon for the consideration of the State or States concerned. No fees, dues or other charges shall be imposed by any contracting State in respect solely of the right of transit over or entry into or exit from its territory of any aircraft of a contracting State or persons or property thereon.

[In the Convention text published by the ICAO, there is a comma after
“International Civil Aviation Organization” rather than a colon.]

Article 16 – Search of aircraft

The appropriate authorities of each of the contracting States shall have the right, without unreasonable delay, to search aircraft of the other contracting States on landing or departure, and to inspect the certificates and other documents prescribed by this Convention.

Chapter III NATIONALITY OF AIRCRAFT

Article 17 – Nationality of aircraft

Aircraft have the nationality of the State in which they are registered.

Article 18 – Dual registration

An aircraft cannot be validly registered in more than one State, but its registration may be changed from one State to another.

Article 19 – National laws governing registration

The registration or transfer of registration of aircraft in any contracting State shall be made in accordance with its law and regulations.

Article 20 – Display of marks

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

Article 21 – Report of registrations

Each contracting State undertakes to supply to any other contracting State or to the International Civil Aviation Organization, on demand, information concerning the registration and ownership of any particular aircraft registered in that State. In addition, each contracting State shall furnish reports to the International Civil Aviation Organization, under such regulations as the latter may prescribe, giving such pertinent data as can be made available concerning the ownership and control of aircraft registered in that State and habitually engaged in international air navigation. The data thus obtained by the International Civil Aviation Organization shall be made available by it on request to the other contracting States.

Chapter IV MEASURES TO FACILITATE AIR NAVIGATION

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 coordinated 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

Article 29 – Documents carried in aircraft

Every aircraft of a contracting State, engaged in international navigation, shall carry the following documents in conformity with the conditions prescribed in this Convention:

- (a) Its certificate of registration;
- (b) Its certificate of airworthiness;
- (c) The appropriate licenses for each member of the crew;
- (d) Its journey log book;
- (e) If it is equipped with radio apparatus, the aircraft radio station license;
- (f) If it carries passengers, a list of their names and places of embarkation and destination;
- (g) If it carries cargo, a manifest and detailed declarations of the cargo.

Article 30 – Aircraft radio equipment

- (a) Aircraft of each contracting State may, in or over the territory of other contracting States, carry radio transmitting apparatus only if a license to install and operate such apparatus has been issued by the appropriate authorities of the State in which the aircraft is registered. The use of radio transmitting apparatus in the territory of the contracting State whose territory is flown over shall be in accordance with the regulations prescribed by that State.
- (b) Radio transmitting apparatus may be used only by members of the flight crew who are provided with a special license for the purpose, issued by the appropriate authorities of the State in which the aircraft is registered.

Article 31 – Certificates of airworthiness

Every aircraft engaged in international navigation shall be provided with a certificate of airworthiness issued or rendered valid by the State in which it is registered.

Article 32 – Licenses 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 licenses issued or rendered valid by the State in which the aircraft is registered.
- (b) Each contracting State reserves the right to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licenses granted to any of its nationals by another contracting State.

[The word “flight” is misspelt as “light” in paragraph (b).]

Article 33 – Recognition of certificates and licenses

Certificates of airworthiness and certificates of competency and licenses 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 licenses were issued or rendered valid are equal to or above the minimum standards which may be established from time to time pursuant to this Convention.

Article 34 – Journey log books

There shall be maintained in respect of every aircraft engaged in international navigation a journey log book in which shall be entered particulars of the aircraft, its crew and of each journey, in such form as may be prescribed from time to time pursuant to this Convention.

Article 35 – Cargo restrictions

- (a) No munitions of war or implements of war may be carried in or above the territory of a State in aircraft engaged in international navigation, except by permission of such State. Each State shall determine by regulations what constitutes munitions of war or implements of war for the purposes of this Article, giving due consideration, for the purposes of uniformity, to such recommendations as the International Civil Aviation Organization may from time to time make.
- (b) Each contracting State reserves the right, for reasons of public order and safety, to regulate or prohibit the carriage in or above its territory of articles other than those enumerated in paragraph (a): provided that no distinction is made in this respect between its national aircraft engaged in international navigation and the aircraft of the other States so engaged; and provided further that no restriction shall be imposed which may interfere with the carriage and use on aircraft of apparatus necessary for the operation or navigation of the aircraft or the safety of the personnel or passengers.

Article 36 – Photographic apparatus

Each contracting State may prohibit or regulate the use of photographic apparatus in aircraft over its territory.

Chapter VI

INTERNATIONAL STANDARDS AND RECOMMENDED PRACTICES

Article 37 – Adoption of international standards and procedures

Each contracting State undertakes to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation.

To this end the International Civil Aviation Organization shall adopt and amend from time to time, as may be necessary, international standards and recommended practices and procedures dealing with:

- (a) Communications systems and air navigation aids, including ground marking;
- (b) Characteristics of airports and landing areas;
- (c) Rules of the air and air traffic control practices;
- (d) Licensing of operating and mechanical personnel;
- (e) Airworthiness of aircraft;
- (f) Registration and identification of aircraft;
- (g) Collection and exchange of meteorological information;
- (h) Log books;
- (i) Aeronautical maps and charts;

- (j) Customs and immigration procedures;
- (k) Aircraft in distress and investigation of accidents;

and such other matters concerned with the safety, regularity, and efficiency of air navigation as may from time to time appear appropriate.

[The portion of Article 37 above the lettered list appears as a single paragraph in the Government Gazette. It is presented as two paragraphs here, as it appears in the Convention text published by the ICAO.]

Article 38 – Departures from international standards and procedures

Any State which finds it impracticable to comply in all respects with any such international standard or procedure, or to bring its own regulations or practices into full accord with any international standard or procedure after amendment of the latter, or which deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, shall give immediate notification to the International Civil Aviation Organization of the differences between its own practice and that established by the international standard. In the case of amendments to international standards, any State which does not make the appropriate amendments to its own regulations or practices shall give notice to the Council within sixty days of the adoption of the amendment to the international standard, or indicate the action which it proposes to take. In any such case, the Council shall make immediate notification to all other states of the difference which exists between one or more features of an international standard and the corresponding national practice of that State.

Article 39 – Endorsement of certificates and licenses

- (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 license who does not satisfy in full the conditions laid down in the international standard relating to the class of license or certificate which he holds shall have endorsed on or attached to his license a complete enumeration of the particulars in which he does not satisfy such conditions.

Article 40 – Validity of endorsed certificates and licenses

No aircraft or personnel having certificates or licenses so endorsed shall participate in international navigation, except with the permission of the State or States whose territory is entered. The registration or use of any such aircraft, or of any certificated aircraft part, in any State other than that in which it was originally certificated shall be at the discretion of the State into which the aircraft or part is imported.

Article 41 – Recognition of existing standards of airworthiness

The provisions of this Chapter shall not apply to aircraft and aircraft equipment of types of which the prototype is submitted to the appropriate national authorities for certification prior to a date three years after the date of adoption of an international standard of airworthiness for such equipment.

Article 42 – Recognition of existing standards of competency of personnel

The provisions of this Chapter shall not apply to personnel whose licences are originally issued prior to a date one year after initial adoption of an international standard of qualification for such personnel; but they shall in any case apply to all personnel whose licenses remain valid five years after the date of adoption of such standard.

Part II – THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

Chapter VII THE ORGANIZATION

[Obvious formatting errors in heading corrected.]

Article 43 – Name and composition

An organization to be named the International Civil Aviation Organization is formed by the Convention. It is made up of an Assembly, a Council, and such other bodies as may be necessary.

Article 44 – Objectives

The aims and objectives of the Organization are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to:

- (a) Insure the safe and orderly growth of international civil aviation throughout the world;
- (b) Encourage the arts of aircraft design and operation for peaceful purposes;
- (c) Encourage the development of airways, airports, and air navigation facilities for international civil aviation;
- (d) Meet the needs of the peoples of the world for safe, regular, efficient and economical air transport;
- (e) Prevent economic waste caused by unreasonable competition;
- (f) Insure that the rights of contracting States are fully respected and that every contracting State has a fair opportunity to operate international airlines;
- (g) Avoid discrimination between contracting States;
- (h) Promote safety of flight in international air navigation;
- (i) Promote generally the development of all aspects of international civil aeronautics.

Article 45 – Permanent seat

The permanent seat of the Organization shall be at such place as shall be determined at the final meeting of the Interim Assembly of the Provisional International Civil Aviation Organization set up by the Interim Agreement on International Civil Aviation signed at Chicago on December 7, 1944. The seat may be temporarily transferred elsewhere by decision of the Council, and otherwise than temporarily by decision of the Assembly, such decision to be taken by the number of votes specified by the Assembly. The number of votes so specified will not be less than three-fifths of the total number of contracting States.

[This is the text of Article 45 as amended by the Protocol relating to an Amendment to the Convention on International Civil Aviation [Article 45], Montreal, 1954, which entered into force on 16 May 1958. The Union of South Africa ratified this Protocol on behalf of SWA/Namibia (see Report on Study by Secretary-General of the United Nations on UN Security Council Resolution R283 of 1970). However, Namibia did not accept the Protocol after independence and is not listed as a party to the Protocol by the depositary. Thus, in terms of international law, Namibia is bound by the original text of Article 45, which reads as follows:]

[“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.”]

Article 46 – First meeting of Assembly

The first meeting of the Assembly shall be summoned by the Interim Council of the above-mentioned Provisional Organization as soon as the Convention has come into force, to meet at a time and place to be decided by the Interim Council.

Article 47 – Legal capacity

The Organization shall enjoy in the territory of each contracting State such legal capacity as may be necessary for the performance of its functions. Full juridical personality shall be granted wherever compatible with the constitution and laws of the State concerned.

Chapter VIII THE ASSEMBLY

Article 48 – Meetings of the Assembly and voting

[In the Convention text published by the ICAO, the heading of Article 48 is “Meetings of Assembly and voting”, without the word “the.”]

- (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. An extraordinary meeting of the Assembly may be held at any time upon the call of the Council or at the request of not less than one-fifth of the total number of contracting States addressed to the Secretary General.

[This Article was amended by the Protocol relating to certain Amendments to the Convention on International Civil Aviation [Articles 48(a), 49(e) and 61], Montreal, 1954, which entered into force on 12 December 1956, and then subsequently by the Protocol relating to an Amendment to the Convention on International Civil Aviation [Article 48(a)], Rome, 1962, which entered into force on 11 September 1975. South Africa ratified the 1954 Protocol on behalf of SWA/Namibia (see Report on Study by Secretary-General of the United Nations on UN Security Council Resolution R283 of 1970). However, Namibia did not accept either of these Protocols after independence and is not listed as a party to either Protocol by the depositary. Thus, in terms of international law, Namibia is bound by the original unamended text of this Article:]

[“The Assembly shall meet annually and shall be convened by the Council at a suitable time and place. Extraordinary meetings of the Assembly may be held at any time upon the call of the Council or at the request of any ten contracting States addressed to the Secretary General.”]

- (b) All contracting States shall have an equal right to be represented at the meetings of the Assembly and each contracting State shall be entitled to one vote. Delegates representing contracting States may be assisted by technical advisers who may participate in the meetings but shall have no vote.
- (c) A majority of the contracting States is required to constitute a quorum for the meetings of the Assembly. Unless otherwise provided in this Convention, decisions of the Assembly shall be taken by a majority of the votes cast.

Article 49 – Powers and duties of the Assembly

[In the Convention text published by the ICAO, the heading of Article 49 is “Powers and duties of Assembly”, without the word “the”.]

The powers and duties of the Assembly shall be to:

- (a) Elect at each meeting its President and other officers;
- (b) Elect the contracting States to be represented on the Council, in accordance with the provisions of Chapter IX;
- (c) Examine and take appropriate action on the reports of the Council and decide on any matter referred to it by the Council;
- (d) Determine its own rules of procedure and establish such subsidiary commissions as it may consider to be necessary or desirable;
- (e) Vote annual budgets and determine the financial arrangements of the Organization, in accordance with the provisions of Chapter XII;

[This is the text of the Article as amended by the Protocol relating to certain Amendments to the Convention on International Civil Aviation [Articles 48(a), 49(e) and 61], Montreal, 1954, which entered into force on 12 December 1956. The Union of South Africa ratified this Protocol on behalf of SWA/Namibia (see Report on Study by Secretary-General of the United Nations on UN Security Council Resolution R283 of 1970). However, Namibia did not accept the Protocol after independence and is not listed as a party to the Protocol by the depositary. Thus, in terms of international law, Namibia is bound by the original unamended text of this Article:]

[“Vote an annual budget and determine the financial arrangements of the Organization, in accordance with the provisions of Chapter XII;”]

- (f) Review expenditures and approve the accounts of the Organization;
- (g) Refer, at its discretion, to the Council, to subsidiary commissions, or to any other body any matter within its sphere of action;
- (h) Delegate to the Council the powers and authority necessary or desirable for the discharge of the duties of the Organization and revoke or modify the delegations of authority at any time;
- (i) Carry out the appropriate provisions of Chapter XIII;
- (j) Consider proposals for the modification or amendment of the provisions of this Convention and, if it approves of the proposals, recommend them to the contracting States in accordance with the provisions of Chapter XXI;
- (k) Deal with any matter within the sphere of action of the Organization not specifically assigned to the Council.

Chapter IX THE COUNCIL

Article 50 – Composition and election of Council

- (a) The Council shall be a permanent body responsible to the Assembly. It shall be composed of thirty-three 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 next following election.

[Article 50(a), as amended by the Protocol relating to an Amendment to article 50(a) of the Convention on International Civil Aviation, Montreal, 1990, accepted by Namibia, provides that the Council shall be composed of thirty-six contracting States.]

- (b) In electing the members of the Council, the Assembly shall give adequate representation to (1) the States of chief importance in air transport; (2) the States not otherwise included which make the largest contribution to the provision of facilities for international civil air navigation; and (3) the States not otherwise included whose designation will insure that all the major geographic areas of the world are represented on the Council. Any vacancy on the Council shall be filled by the Assembly as soon as possible; any contracting State so elected to the Council shall hold office for the unexpired portion of its predecessor's term of office.
- (c) No representative of a contracting State on the Council shall be actively associated with the operation of an international air service or financially interested in such a service.

Article 51 – President of Council

The Council shall elect its President for a term of three years. He may be reelected. 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:

[The word “reelected” appears without a hyphen in the Government Gazette and in the Convention text published by the ICAO, as reproduced above.]

- (a) Convene meetings of the Council, the Air Transport Committee, and the Air Navigation Commission;
- (b) Serve as representative of the Council; and
- (c) Carry out on behalf of the Council the functions which the Council assigns to him.

Article 52 – Voting in Council

Decisions by the Council shall require approval by a majority of its members. The Council may delegate authority with respect to any particular matter to a committee of its members. Decisions of any committee of the Council may be appealed to the Council by any interested contracting State.

Article 53 – Participation without a vote

Any contracting State may participate, without a vote, in the consideration by the Council and by its committees and commissions of any question which especially affects its interests. No member of the Council shall vote in the consideration by the Council of a dispute to which it is a party.

Article 54 – Mandatory functions of Council

The Council shall:

- (a) Submit annual reports to the Assembly;
- (b) Carry out the directions of the Assembly and discharge the duties and obligations which are laid on it by this Convention;
- (c) Determine its organization and rules of procedure;
- (d) Appoint and define the duties of an Air Transport Committee, which shall be chosen from among the representatives of the members of the Council, and which shall be responsible to it;

- (e) Establish an Air Navigation Commission, in accordance with the provisions of Chapter X;
- (f) Administer the finances of the Organization in accordance with the provisions of Chapters XII and XV;
- (g) Determine the emoluments of the President of the Council;
- (h) Appoint a chief executive officer who shall be called the Secretary General, and make provision for the appointment of such other personnel as may be necessary, in accordance with the provisions of Chapter XI;
- (i) Request, collect, examine and publish information relating to the advancement of air navigation and the operation of international air services, including information about the costs of operation and particulars of subsidies paid to airlines from public funds;
- (j) Report to contracting States any infraction of this Convention, as well as any failure to carry out recommendations or determinations of the Council;
- (k) Report to the Assembly any infraction of this Convention where a contracting State has failed to take appropriate action within a reasonable time after notice of the infraction;
- (l) Adopt, in accordance with the provisions of Chapter VI of this Convention, international standards and recommended practices; for convenience, designate them as Annexes to this Convention; and notify all contracting States of the action taken;
- (m) Consider recommendations of the Air Navigation Commission for amendment of the Annexes and take action in accordance with the provisions of Chapter XX;
- (n) Consider any matter relating to the Convention which any contracting State refers to it.

Article 55 – Permissive functions of Council

The Council may:

- (a) Where appropriate and as experience may show to be desirable, create subordinate air transport commissions on a regional or other basis and define groups of states or airlines with or through which it may deal to facilitate the carrying out of the aims of this Convention;
- (b) Delegate to the Air Navigation Commission duties additional to those set forth in the Convention and revoke or modify such delegations of authority at any time;
- (c) Conduct research into all aspects of air transport and air navigation which are of international importance, communicate the results of its research to the contracting States, and facilitate the exchange of information between contracting States on air transport and air navigation matters;
- (d) Study any matters affecting the organization and operation of international air transport, including the international ownership and operation of international air services on trunk routes, and submit to the Assembly plans in relation thereto;
- (e) Investigate, at the request of any contracting State, any situation which may appear to present avoidable obstacles to the development of international air navigation; and, after such investigation, issue such reports as may appear to it desirable.

Chapter X THE AIR NAVIGATION COMMISSION

Article 56 – Nomination and appointment of Commission

The Air Navigation Commission shall be composed of fifteen members appointed by the Council from among persons nominated by contracting States. These persons shall have suitable qualifications and experience in the

science and practice of aeronautics. The Council shall request all contracting States to submit nominations. The President of the Air Navigation Commission shall be appointed by the Council.

Article 57 – Duties of Commission

The Air Navigation Commission shall:

- (a) Consider, and recommend to the Council for adoption, modifications of the Annexes to this Convention;
- (b) Establish technical subcommissions on which any contracting State may be represented, if it so desires;
- (c) Advise the Council concerning the collection and communication to the contracting States of all information which it considers necessary and useful for the advancement of air navigation.

Chapter XI PERSONNEL

Article 58 – Appointment of personnel

Subject to any rules laid down by the Assembly and to the provisions of this Convention, the Council shall determine the method of appointment and of termination of appointment, the training, and the salaries, allowances, and conditions of service of the Secretary General and other personnel of the Organization, and may employ or make use of the services of nationals of any contracting State.

Article 59 – International character of personnel

The President of the Council, the Secretary General, and other personnel shall not seek or receive instructions in regard to the discharge of their responsibilities from any authority external to the Organization. Each contracting State undertakes fully to respect the international character of the responsibilities of the personnel and not to seek to influence any of its nationals in the discharge of their responsibilities.

Article 60 – Immunities and privileges of personnel

Each contracting State undertakes, so far as possible under its constitutional procedure, to accord to the President of the Council, the Secretary General, and the other personnel of the Organization, the immunities and privileges which are accorded to corresponding personnel of other public international organizations. If a general international agreement on the immunities and privileges of international civil servants is arrived at, the immunities and privileges accorded to the President, the Secretary General, and the other personnel of the Organization shall be the immunities and privileges accorded under that general international agreement.

Chapter XII FINANCE

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.

[This is the text of the Article as amended by the Protocol relating to certain Amendments to the Convention on International Civil Aviation [Articles 48(a), 49(e) and 61], Montreal, 1954, which entered into force on 12 December 1956. The Union of South Africa ratified this Protocol

on behalf of SWA/Namibia (see Report on Study by Secretary-General of the United Nations on UN Security Council Resolution R283 of 1970). However, Namibia did not accept the Protocol after independence and is not listed as a party to the Protocol by the depositary. Thus, in terms of international law, Namibia is bound by the original unamended text of this Article:]

[“The Council shall submit to the Assembly an annual budget, annual statements of accounts and estimates of all receipts and expenditures. The Assembly shall vote the budget 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

Article 64 – Security arrangements

The Organization may, with respect to air matters within its competence directly affecting world security, by vote of the Assembly enter into appropriate arrangements with any general organization set up by the nations of the world to preserve peace.

Article 65 – Arrangements with other international bodies

The Council, on behalf of the Organization, may enter into agreements with other international bodies for the maintenance of common services and for common arrangements concerning personnel and, with the approval of the Assembly, may enter into such other arrangements as may facilitate the work of the Organization.

Article 66 – Functions relating to other agreements

- (a) The Organization shall also carry out the functions placed upon it by the International Air Services Transit Agreement and by the International Air Transport Agreement drawn up at Chicago on December 7, 1944, in accordance with the terms and conditions therein set forth.
- (b) Members of the Assembly and the Council who have not accepted the International Air Services Transit Agreement or the International Air Transport Agreement drawn up at Chicago on December 7, 1944 shall not have the right to vote on any questions referred to the Assembly or Council under the provisions of the relevant Agreement.

Part III – INTERNATIONAL AIR TRANSPORT

Chapter XIV INFORMATION AND REPORTS

Article 67 – File reports with Council

Each contracting State undertakes that its international airlines shall, in accordance with requirements laid down by the Council, file with the Council traffic reports, cost statistics and financial statements showing among other things all receipts and the sources thereof.

Chapter XV AIRPORTS AND OTHER AIR NAVIGATION FACILITIES

Article 68 – Designation of routes and airports

Each contracting State may, subject to the provisions of this Convention, designate the route to be followed within its territory by any international air service and the airports which any such service may use.

Article 69 – Improvement of air navigation facilities

If the Council is of the opinion that the airports or other air navigation facilities, including radio and meteorological services, of a contracting State are not reasonably adequate for the safe, regular, efficient, and economical operation of international air services, present or contemplated, the Council shall consult with the State directly concerned, and other States affected, with a view to finding means by which the situation may be remedied, and may make recommendations for that purpose. No contracting State shall be guilty of an infraction of this Convention if it fails to carry out these recommendations.

Article 70 – Financing of air navigation facilities

A contracting State, in the circumstances arising under the provisions of Article 69, may conclude an arrangement with the Council for giving effect to such recommendations. The State may elect to bear all of the costs involved in any such arrangement. If the State does not so elect, the Council may agree, at the request of the State, to provide for all or a portion of the costs.

Article 71 – Provision and maintenance of facilities by Council

If a contracting State so requests, the Council may agree to provide, man, maintain, and administer any or all of the airports and other air navigation facilities including radio and meteorological services, required in its territory for the safe, regular, efficient and economical operation of the international air services of the other contracting States, and may specify just and reasonable charges for the use of the facilities provided.

Article 72 – Acquisition or use of land

Where land is needed for facilities financed in whole or in part by the Council at the request of a contracting State, that State shall either provide the land itself, retaining title if it wishes, or facilitate the use of the land by the Council on just and reasonable terms and in accordance with the laws of the State concerned.

Article 73 – Expenditure and assessment of funds

Within the limit of the funds which may be made available to it by the Assembly under Chapter XII, the Council may make current expenditures for the purposes of this Chapter from the general funds of the Organization. The Council shall assess the capital funds required for the purposes of this Chapter in previously agreed proportions over a reasonable period of time to the contracting States consenting thereto whose airlines use the facilities. The Council may also assess to States that consent any working funds that are required.

Article 74 – Technical assistance and utilization of revenues

When the Council, at the request of a contracting State, advances funds or provides airports or other facilities in whole or in part, the arrangement may provide, with the consent of that State, for technical assistance in the supervision and operation of the airports and other facilities, and for the payment, from the revenues derived from the operation of the airports and other facilities, of the operating expenses of the airports and the other facilities, and of interest and amortization charges.

Article 75 – Taking over of facilities from Council

A contracting State may at any time discharge any obligation into which it has entered under Article 70, and take over airports and other facilities which the Council has provided in its territory pursuant to the provisions of Articles 71 and 72, by paying to the Council an amount which in the opinion of the Council is reasonable in the circumstances. If the State considers that the amount fixed by the Council is unreasonable it may appeal to the Assembly against the decision of the Council and the Assembly may confirm or amend the decision of the Council.

Article 76 – Return of funds

Funds obtained by the Council through reimbursement under Article 75 and from receipts of interest and amortization payments under Article 74 shall, in the case of advances originally financed by States under Article 73, be returned to the States which were originally assessed in the proportion of their assessments, as determined by the Council.

Chapter XVI

JOINT OPERATING ORGANIZATIONS AND POOLED SERVICES

Article 77 – Joint operating organizations permitted

Nothing in this Convention shall prevent two or more contracting States from constituting joint air transport operating organizations or international operating agencies and from pooling their air services on any routes or in any regions, but such organizations or agencies and such pooled services shall be subject to all the provisions of this Convention, including those relating to the registration of agreements with the Council. The Council shall determine in what manner the provisions of this Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies.

Article 78 – Function of Council

The Council may suggest to contracting States concerned that they form joint organizations to operate air services on any routes or in any regions.

Article 79 – Participation in operating organizations

A State may participate in joint operating organizations or in pooling arrangements, either through its government or through an airline company or companies designated by its government. The companies may, at the sole discretion of the State concerned, be state-owned or partly state-owned or privately owned.

[In the Convention text published by the ICAO, in contrast to the text in the Government Gazette, there is a hyphen in the second use of the term “state-owned”.]

Part IV – FINAL PROVISIONS

Chapter XVII

OTHER AERONAUTICAL AGREEMENTS AND ARRANGEMENTS

Article 80 – Paris and Habana Conventions

Each contracting State undertakes, immediately upon the coming into force of this Convention, to give notice of denunciation of the Convention relating to the Regulation of Aerial Navigation signed at Paris on October 13, 1919 or the Convention on Commercial Aviation signed at Habana on February 20, 1928, if it is a party to either. As between contracting States, this Convention supersedes the Conventions of Paris and Habana previously referred to.

Article 81 – Registration of existing agreements

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

Article 82 – Abrogation of inconsistent arrangements

The contracting States accept this Convention as abrogating all obligations and understandings between them which are inconsistent with its terms, and undertake not to enter into any such obligations and understandings. A contracting State which, before becoming a member of the Organization has undertaken any obligations toward a non-contracting State or a national of a contracting State or of a non-contracting State inconsistent with the terms of this Convention, shall take immediate steps to procure its release from the obligations. If an airline of any contracting State has entered into any such inconsistent obligations, the State of which it is a national shall use its best efforts to secure their termination forthwith and shall in any event cause them to be terminated as soon as such action can lawfully be taken after the coming into force of this Convention.

Article 83 – Registration of new arrangements

Subject to the provisions of the preceding Article, any contracting State may make arrangements not inconsistent with the provisions of this Convention. Any such arrangement shall be forthwith registered with the Council, which shall make it public as soon as possible.

[The Protocol relating to an Amendment to the Convention (Article 83bis), Montreal, 1980, accepted by Namibia, amends the Convention by adding an Article 83bis: “Article 83bis Transfer of certain functions and duties”]

[(a) Notwithstanding the provisions of Articles 12, 30, 31 and 32(a), when an aircraft registered in a contracting State is operated pursuant to an agreement for the lease, charter or interchange of the aircraft or any similar arrangement by an operator who has his principal place of business or, if he has no such place of business, his permanent residence in another contracting State, the State

of registry may, by agreement with such other State, transfer to it all or part of its functions and duties as State of registry in respect of that aircraft under Articles 12, 30, 31 and 32 a). The State of registry shall be relieved of responsibility in respect of the functions and duties transferred.]

[(b) The transfer shall not have effect in respect of other contracting States before either the agreement between States in which it is embodied has been registered with the Council and made public pursuant to Article 83 or the existence and scope of the agreement have been directly communicated to the authorities of the other contracting State or States concerned by a State party to the agreement.]

[(c) The provisions of paragraphs (a) and (b) above shall also be applicable to cases covered by Article 77.”]

Chapter XVIII DISPUTES AND DEFAULT

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.

[The Permanent Court of International Justice is now known as the International Court of Justice.]

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 of 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 – 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 – Adoption and amendment of Annexes

- (a) The adoption by the Council of the Annexes described in Article 54, subparagraph (l), 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

Article 91 – Ratification of Convention

- (a) This Convention shall be subject to ratification by the signatory States. The instruments of ratification shall be deposited in the archives of the Government of the United States of America, which shall give notice of the date of the deposit to each of the signatory and adhering States.
- (b) As soon as this Convention has been ratified or adhered to by twenty-six States it shall come into force between them on the thirtieth day after deposit of the twenty-sixth instrument. It shall come into force for each State ratifying thereafter on the thirtieth day after the deposit of its instrument of ratification.
- (c) It shall be the duty of the Government of the United States of America to notify the government of each of the signatory and adhering States of the date on which this Convention comes into force.

Article 92 – Adherence to Convention

- (a) This Convention shall be open for adherence by members of the United Nations and States associated with them, and States which remained neutral during the present world conflict.

- (b) Adherence shall be effected by a notification addressed to the Government of the United States of America and shall take effect as from the thirtieth day from the receipt of the notification by the Government of the United States of America, which shall notify all the contracting States.

Article 93 – Admission of other States

States other than those provided for in Articles 91 and 92 (a) may, subject to approval by any general international organization set up by the nations of the world to preserve peace, be admitted to participation in this Convention by means of a four-fifths vote of the Assembly and on such conditions as the Assembly may prescribe: provided that in each case the assent of any State invaded or attacked during the present war by the State seeking admission shall be necessary.

Article 93 – bis

- (a) Notwithstanding the provisions of Articles 91, 92 and 93 above:
 - (1) A State whose government the General Assembly of the United Nations has recommended be debarred from membership in international agencies established by or brought into relationship with the United Nations shall automatically cease to be a member of the International Civil Aviation Organization;
 - (2) A State which has been expelled from membership in the United Nations shall automatically cease to be a member of the International Civil Aviation Organization unless the General Assembly of the United Nations attaches to its act of expulsion a recommendation to the contrary.
- (b) A State which ceases to be a member of the International Civil Aviation Organization as a result of the provisions of paragraph (a) above may, after approval by the General Assembly of the United Nations, be readmitted to the International Civil Aviation Organization upon application and upon approval by a majority of the Council.
- (c) Members of the Organization which are suspended from the exercise of the rights and privileges of membership in the United Nations shall, upon the request of the latter, be suspended from the rights and privileges of membership in this Organization.

[The Protocol relating to an Amendment to the Convention on International Civil Aviation [Article 93bis], Montreal, 1947, which added Article 93bis, entered into force internationally on 20 March 1961. However Namibia has not accepted this Protocol (source: ICAO/UNTC). Thus, Article 93bis does not apply to Namibia.]

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.

[In the Convention text published by the ICAO, in contrast to the Government Gazette, there is a hyphen in the second use of the term “two-thirds”.]

- (b) If in its opinion the amendment is of such a nature as to justify this course, the Assembly in its resolution recommending adoption may provide that any State which has not ratified within a specified period after the amendment has come into force shall thereupon cease to be a member of the Organization and a party to the Convention.

Article 95 – Denunciation of Convention

- (a) Any contracting State may give notice of denunciation of this Convention three years after its coming into effect by notification addressed to the Government of the United States of America, which shall at once inform each of the contracting States.
- (b) Denunciation shall take effect one year from the date of the receipt of the notification and shall operate only as regards the State effecting the denunciation.

Chapter XXII DEFINITIONS

Article 96 – For the purpose of this Convention the expression:

- (a) “Air service” means any scheduled air service performed by aircraft for the public transport of passengers, mail or cargo.
- (b) “International air service” means an air service which passes through the air space over the territory of more than one State.
- (c) “Airline” means any air transport enterprise offering or operating an international air service.
- (d) “Stop for non-traffic purposes” means a landing for any purpose other than taking on or discharging passengers, cargo or mail.

SIGNATURE OF CONVENTION

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

DONE at Chicago the seventh day of December 1944, in the English language. A text drawn up in the English, French and Spanish languages, each of which shall be of equal authenticity, shall be open 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.

[The Final Clause of the Convention was amended by the Protocol relating to an Amendment to the Convention on International Civil Aviation (Final Clause, Russian Text), Montreal, 1977, accepted by Namibia, to read as follows:]

[“DONE at Chicago the seventh day of December 1944 in the English language. The texts of this Convention drawn up in the English, French, Russian and Spanish languages are of equal authenticity. These 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. This Convention shall be open for signature at Washington, D.C.”]

Schedule 2

INTERNATIONAL AIR SERVICES TRANSIT AGREEMENT SIGNED IN CHICAGO ON 7 DECEMBER 1944

[Section 1 of the Act states: “Transit Agreement” means the International Air Services Transit Agreement drawn up at Chicago on 7 December, 1944, and adopted by section 2 of the Aviation Amendment Act, 1946 (Act 41 of 1946), contained in Schedule 2, and includes any amendments thereof and additions thereto binding upon Namibia.”]

Neither the Government of the United States of America as the treaty depositary (www.state.gov/documents/organization/22698.rtf) nor the ICAO as the administering secretariat (www.icao.int/secretariat/legal/List%20of%20Parties/Transit_EN.pdf#search=1944%20International%20Air%20Services%20Transit%20Agreement) lists Namibia as a party to this Agreement. The Union of South Africa deposited an instrument of acceptance on 30 November 1945, in accordance with Article VI of the Agreement, which made the Agreement binding on South West Africa by virtue of South Africa's mandatory power on behalf of South West Africa. However, the list of pre-independence treaties published by the UN Institute for Namibia as an Annex to Independent Namibia: Succession to Treaty Rights & Obligations (Lusaka, 1989) classifies the Transit Agreement as a category B treaty, which means it is not automatically binding on an independent Namibia. However, the Transit Agreement was incorporated into the domestic law of South Africa by the South African Aviation Amendment Act 41 of 1946 (SA GG 3669). This Act amended and supplemented the Aviation Act 16 of 1923 (SA GG 1321), which was applicable to South West Africa. (Section 20 of that Act defined "Union" to include "the mandatory territory of South-West Africa".) The Agreement was again incorporated into South African domestic law prior to Namibian independence by the Aviation Act 74 of 1962 (RSA GG 273), which was also applicable to South West Africa. (Section 1 of that Act defined "Republic" to include "any territory in respect of which Parliament is competent to legislate".) This law remained in force in independent Namibia pursuant to Article 140 of the Namibian Constitution, which preserved all law in force immediately before independence until repealed or amended by Act of Parliament or declared unconstitutional by a competent Court.

This incorporation of the Transit Agreement into domestic law was again confirmed after Namibian independence by the Aviation Amendment Act 10 of 1991 (GG 226), which amended the Aviation Act 74 of 1962 as it continued to apply in independent Namibia and made reference to the Agreement as follows: "Transit Agreement" means the International Air Services Transit Agreement drawn up at Chicago on the seventh day of December, 1944, and adopted by section 2 of the Aviation Amendment Act, 1946 (Act No. 41 of 1946), and set out in the Second Schedule to this Act, and includes any amendments thereof and additions thereto binding upon Namibia by virtue of the provisions of Articles 63(2)(e) and 144 of the Namibian Constitution.

The agreement is now reaffirmed as part of Namibian domestic law by this Act. However, treaties entered into by South Africa, whether before or after its Mandate to govern South West Africa was revoked in 1966, are not considered binding on Namibia as a matter of international law unless Namibia as an independent state has deposited a notification of acceptance. This means that Namibia has made this international agreement a binding part of its domestic law without being bound by it internationally as a matter of international law – creating a very unusual situation.

Since Namibia's intent as expressed by the definition of the Transit Agreement in section 1 of the Act make the schedule accord with the International Transit Agreement, Schedule 2 has been compared against that document. There appear to be no amendments to the initial Transit Agreement. Neither the Government of the United States as the depositary nor ICAO as the administering secretariat make the initial treaty text publicly available, so the text of this Schedule was checked against the text of the Transit Agreement as it appears in the UN Treaty Collection at <https://treaties.un.org/doc/Publication/UNTS/Volume%2084/volume-84-II-252-English.pdf>.

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

Article I

Section 1

Each contracting State grants to the other contracting States the following freedoms of the air in respect of scheduled international air services:

- (1) The privilege to fly across its territory without landing;
- (2) The privilege to land for non-traffic purposes.

The privileges of this section shall not be applicable with respect to airports utilized for military purposes to the exclusion of any scheduled international air services. In areas of active hostilities or of military occupation, and in time of war along the supply routes leading to such areas, the exercise of such privileges shall be subject to the approval of the competent military authorities.

Section 2

The exercise of the foregoing privileges shall be in accordance with the provisions of the Interim Agreement on International Civil Aviation and when it comes into force, with the provisions of the Convention on International Civil Aviation, both drawn up at Chicago on December 7, 1944.

[There is a comma after the word “and” in the text of the Agreement as it appears in the UN Treaty Collection.]

Section 3

A contracting State granting to the airlines of another contracting State the privilege to stop for non-traffic purposes may require such airlines to offer reasonable commercial service at the points at which such stops are made.

Such requirements shall not involve any discrimination between airlines operating on the same route, shall take into account the capacity of the aircraft, and shall be exercised in such a manner as not to prejudice the normal operations of the international air services concerned or the rights and obligations of a contracting State.

Section 4

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

- (1) Designate the route to be followed within its territory by any international air service and the airports which any such service may use;
- (2) Impose or permit to be imposed on any such service just and reasonable charges for the use of such airports and other facilities; these charges shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services: Provided that, upon representation by an interested contracting State, the charges imposed for the use of airports and other facilities shall be subject to review by the Council of the International Civil Aviation Organization established under the above-mentioned Convention, which shall report and make recommendations thereon for the consideration of the State or States concerned.

[The word “Provided” is not capitalised in the text of the Agreement as it appears in the UN Treaty Collection.]

Section 5

Each contracting State reserves the right to withhold or revoke a certificate or permit to an air transport enterprise of another State in any case where it is not satisfied that substantial ownership and effective control are vested in nationals of a contracting State, or in case of failure of such air transport enterprise to comply with the laws of the State over which it operates, or to perform its obligations under this Agreement.

Article II

Section 1

A contracting State which deems that action by another contracting State under this Agreement is causing injustice or hardship to it, may request the Council to examine the situation. The Council shall thereupon enquire into the matter, and shall call the States concerned into consultation. Should such consultation fail to resolve the difficulty, the Council may make appropriate findings and recommendations to the contracting States concerned. If thereafter a contracting State concerned shall in the opinion of the Council unreasonably

fail to take suitable corrective action, the Council may recommend to the Assembly of the above-mentioned Organization that such contracting State be suspended from its rights and privileges under this Agreement until such action has been taken. The Assembly by a two-thirds vote may so suspend such contracting State for such period of time as it may deem proper or until the Council shall find that corrective action has been taken by such State.

Section 2

If any disagreement between two or more contracting States relating to the interpretation or application of this Agreement cannot be settled by negotiation, the provisions of Chapter XVIII of the above-mentioned Convention shall be applicable in the same manner as provided therein with reference to any disagreement relating to the interpretation or application of the above-mentioned Convention.

Article III

This Agreement shall remain in force as long as the above-mentioned Convention: Provided, however, that any contracting State, a party to the present Agreement, may denounce it on one year's notice given by it to the Government of the United States of America, which shall at once inform all other contracting States of such notice of withdrawal.

[In the text of the Agreement as it appears in the UN Treaty Collection: there is a semicolon rather than a colon after the word Convention; the word "Provided" is not capitalised; and the closing phrase is "notice and withdrawal".]

Article IV

[Obvious format error in heading corrected.]

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.

[In the text of the Agreement as it appears in the UN Treaty Collection, "Section II" is written as "Section 2"; and followed by a comma.]

Article V

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

[“Article II” is written as “Article 2” in the text of the Agreement as it appears in the UN Treaty Collection. the Convention referred to does not use Roman numerals in its Article numbers.]

Article VI

SIGNATURES AND ACCEPTANCES OF AGREEMENT

The undersigned delegates to the International Civil Aviation Conference, convened in Chicago on November 1, 1944, have affixed their signatures to this Agreement with the understanding that the Government of the United States of America shall be informed at the earliest possible date by each of the governments on whose behalf the

Agreement has been signed whether signature on its behalf shall constitute an acceptance of the Agreement by that government and an obligation binding upon it.

Any State a member of the International Civil Aviation Organization may accept the present Agreement as an obligation binding upon it by notification of its acceptance to the Government of the United States, and such acceptance shall become effective upon the date of the receipt of such notification by that Government.

This Agreement shall come into force as between contracting States upon its acceptance by each of them. Thereafter it shall become binding as to each other State indicating its acceptance to the Government of the United States on the date of the receipt of the acceptance by that Government. The Government of the United States shall inform all signatory and accepting States of the date of all acceptances of the Agreement, and of the date on which it comes into force for each accepting State.

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

[The text of the Agreement as it appears in the UN Treaty Collection refers to the “dates appearing opposite their respective signatures”.]

DONE at Chicago the seventh day of December, 1944, in the English language. A text drawn up in the English, French and Spanish languages, each of which shall be of equal authenticity, shall be opened for signature at Washington, D.C. Both texts shall be deposited in the archives of the Government of the United States of America, and certified copies shall be transmitted by that Government to the Governments of all the States which may sign or accept this Agreement.

[The plural word “Governments” is not capitalised in the text of the Agreement as it appears in the UN Treaty Collection, and the closing phrase is “sign and accept this Agreement”.]

NOTE: Names of Signatories not printed.

Schedule 3

**CONVENTION ON OFFENCES AND CERTAIN OTHER ACTS COMMITTED ON BOARD
AIRCRAFT, SIGNED AT TOKYO, ON 14 SEPTEMBER 1963 (TOKYO CONVENTION)**

[Section 1 of the Act states:]

["Tokyo Convention" means the Convention on Offences and Certain Other Acts Committed on Board Aircraft done at Tokyo on 14 September 1963, contained in Schedule 3;]

[In contrast to the Act’s definitions of the “Chicago Convention” and the “Transit Agreement” contained in Schedules 1 and 2, respectively, this definition does not refer to amendments to the initial treaty text in relation to the “Tokyo Convention” as it appears in Schedule 3. This seems to indicate that the legislator did not intend to include amendments in the Schedule. However, so far there has only been one amendment to the Tokyo Convention (the Protocol to amend the Convention, 2014) to which Namibia has not yet agreed and which is also not yet in force internationally (source: ICAO, which is the depositary to the Protocol).]

[Thus, Schedule 3 has been compared against the initial text of the Convention as published by the ICAO as the depositary:]

www.icao.int/Meetings/LC35/References/Tokyo%20Convention.EN.FR.SP.pdf?

SPD_101_R0=5c48738b97687c21e854eb13e6547e72s6300000000000000d9dd4854ffff00000000000000000000000000593d331400b2197e5

THE STATES Parties to this Convention HAVE AGREED as follows:

[The word “take-off” appears throughout the Convention with a hyphen in the text published by the ICAO. It appears as “takeoff” in the Government Gazette, as reproduced here.]

Chapter I

SCOPE OF THE CONVENTION

Article 1

1. This Convention shall apply in respect of:
 - (a) offences against penal law;
 - (b) acts which, whether or not they are offences, may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board.
2. Except as provided in Chapter III, this Convention shall apply in respect of offences committed or acts done by a person on board any aircraft registered in a Contracting State, while that aircraft is in flight or on the surface of the high seas or of any other area outside the territory of any State.
3. For the purposes of this Convention, an aircraft is considered to be in flight from the moment when power is applied for the purpose of takeoff until the moment when the landing run ends.
4. This Convention shall not apply to aircraft used in military, customs or police services.

Article 2

Without prejudice to the provisions of Article 4 and except when the safety of the aircraft or of persons or property on board so requires, no provision of this Convention shall be interpreted as authorizing or requiring any action in respect of offences against penal laws of a political nature or those based on racial or religious discrimination.

Chapter II

JURISDICTION

Article 3

1. The State of registration of the aircraft is competent to exercise jurisdiction over offences and acts committed on board.
2. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction as the State of registration over offences committed on board aircraft registered in such State.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 4

A Contracting State which is not the State of registration may not interfere with an aircraft in flight in order to exercise its criminal jurisdiction over an offence committed on board except in the following cases:

- (a) the offence has effect on the territory of such State;
- (b) the offence has been committed by or against a national or permanent resident of such State;
- (c) the offence is against the security of such State;
- (d) the offence consists of a breach of any rules or regulations relating to the flight or manoeuvre of aircraft in force in such State;

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

Chapter III

POWERS OF THE AIRCRAFT COMMANDER

Article 5

1. The provisions of this Chapter shall not apply to offences and acts committed or about to be committed by a person on board an aircraft in flight in the airspace of the State of registration or over the high seas or any other area outside the territory of any State unless the last point of takeoff or the next point of intended landing is situated in a State other than that of registration, or the aircraft subsequently flies in the airspace of a State other than that of registration with such person still on board.
2. Notwithstanding the provisions of Article 1, paragraph 3, an aircraft shall for the purposes of this Chapter, be considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation. In the case of a forced landing, the provisions of this Chapter shall continue to apply with respect to offences and acts committed on board until competent authorities of a State take over the responsibility for the aircraft and for the persons and property on board.

Article 6

1. The aircraft commander may, when he has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft, an offence or act contemplated in Article 1, paragraph 1, impose upon such person reasonable measures including restraint which are necessary:
 - (a) to protect the safety of the aircraft, or of persons or property therein; or
 - (b) to maintain good order and discipline on board; or
 - (c) to enable him to deliver such person to competent authorities or to disembark him in accordance with the provisions of this Chapter.
2. The aircraft commander may require or authorize the assistance of other crew members and may request or authorize, but not require, the assistance of passengers to restrain any person whom he is entitled to restrain. Any crew member or passenger may also take reasonable preventive measures without such authorization when he has reasonable grounds to believe that such action is immediately necessary to protect the safety of the aircraft, or of persons or property therein.

Article 7

1. Measures of restraint imposed upon a person in accordance with Article 6 shall not be continued beyond any point at which the aircraft lands unless:
 - (a) such point is in the territory of a non-Contracting State and its authorities refuse to permit disembarkation of that person or those measures have been imposed in accordance with Article 6, paragraph 1(c) in order to enable his delivery to competent authorities;
 - (b) the aircraft makes a forced landing and the aircraft commander is unable to deliver that person to competent authorities; or
 - (c) that person agrees to onward carriage under restraint.
2. The aircraft commander shall as soon as practicable, and if possible before landing in the territory of a State with a person on board who has been placed under restraint in accordance with the provisions of

Article 6, notify the authorities of such State of the fact that a person on board is under restraint and of the reasons for such restraint.

Article 8

1. The aircraft commander may, in so far as it is necessary for the purpose of subparagraph (a) or (b) or paragraph 1 of Article 6, disembark in the territory of any State in which the aircraft lands any person who he has reasonable grounds to believe has committed, or is about to commit, on board the aircraft an act contemplated in Article 1, paragraph 1(b).
2. The aircraft commander shall report to the authorities of the State in which he disembarks any person pursuant to this Article, the fact of, and the reasons for, such disembarkation.

Article 9

1. The aircraft commander may deliver to the competent authorities of any Contracting State in the territory of which the aircraft lands any person who he has reasonable grounds to believe has committed on board the aircraft an act which, in his opinion, is a serious offence according to the penal law of the State of registration of the aircraft.
2. The aircraft commander shall as soon as practicable and if possible before landing in the territory of a Contracting State with a person on board whom the aircraft commander intends to deliver in accordance with the preceding paragraph, notify the authorities of such State of his intention to deliver such person and the reasons therefor.
3. The aircraft commander shall furnish the authorities to whom any suspected offender is delivered in accordance with the provisions of this Article with evidence and information which, under the law of the State of registration of the aircraft, are lawfully in his possession.

Article 10

For actions taken in accordance with this Convention, neither the aircraft commander, any other member of the crew, any passenger, the owner or operator of the aircraft, nor the person on whose behalf the flight was performed shall be held responsible in any proceeding on account of the treatment undergone by the person against whom the actions were taken.

Chapter IV UNLAWFUL SEIZURE OF AIRCRAFT

Article 11

1. When a person on board has unlawfully committed by force or threat thereof an act of interference, seizure, or other wrongful exercise of control of an aircraft in flight or when such an act is about to be committed, Contracting States shall take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his control of the aircraft.
2. In the cases contemplated in the preceding paragraph, the Contracting State in which the aircraft lands shall permit its passengers and crew to continue their journey as soon as practicable, and shall return the aircraft and its cargo to the persons lawfully entitled to possession.

Chapter V

POWERS AND DUTIES OF STATES

Article 12

Any Contracting State shall allow the commander of an aircraft registered in another Contracting State to disembark any person pursuant to Article 8, paragraph 1.

Article 13

1. Any Contracting State shall take delivery of any person whom the aircraft commander delivers pursuant to Article 9, paragraph 1.
2. Upon being satisfied that the circumstances so warrant, any Contracting State shall take custody or other measures to ensure the presence of any person suspected of an act contemplated in Article 11, paragraph 1 and of any person of whom it has taken delivery. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is reasonably necessary to enable any criminal or extradition proceedings to be instituted.
3. Any person in custody pursuant to the previous paragraph shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national.
4. Any Contracting State, to which a person is delivered pursuant to Article 9, paragraph 1, or in whose territory an aircraft lands following the commission of an act contemplated in Article 11, paragraph 1, shall immediately make a preliminary enquiry into the facts.
5. When a State, pursuant to this Article, has taken a person into custody, it shall immediately notify the State of registration of the aircraft and the State of nationality of

the detained person and, if it considers it advisable, any other interested State of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary enquiry contemplated in paragraph 4 of this Article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 14

1. When any person has been disembarked in accordance with Article 8, paragraph 1, or delivered in accordance with Article 9, paragraph 1, or has disembarked after committing an act contemplated in Article 11, paragraph 1, and when such person cannot or does not desire to continue his journey and the State of landing refuses to admit him, that State may, if the person in question is not a national or permanent resident of that State, return him to the territory of the State of which he is a national or permanent resident or to the territory of the State in which he began his journey by air.
2. Neither disembarkation, nor delivery, nor the taking of custody or other measures contemplated in Article 13, paragraph 2, nor return of the person concerned, shall be considered as admission to the territory of the Contracting State concerned for the purpose of its law relating to entry or admission of persons and nothing in this Convention shall affect the law of a Contracting State relating to the expulsion of persons from its territory.

[In the text of the Convention published by the ICAO, the opening phrase of subarticle 2 is “Neither disembarkation, nor delivery, nor the taking of custody or other measures...”.]

Article 15

1. Without prejudice to Article 14, any person who has been disembarked in accordance with Article 8, paragraph 1, or delivered in accordance with Article 9, paragraph 1, or has disembarked after committing an act contemplated in Article 11, paragraph 1, and who desires to continue his journey shall be at liberty as soon as practicable to proceed to any destination of his choice unless his presence is required by the law of the State of landing for the purpose of extradition or criminal proceedings.
2. Without prejudice to its law as to entry and admission to, and extradition and expulsion from its territory, a Contracting State in whose territory a person has been disembarked in accordance with Article 8, paragraph 1, or delivered in accordance with Article 9, paragraph 1 or has disembarked and is suspected of having committed an act contemplated in Article 11, paragraph 1, shall accord to such person treatment which is no less favourable for his protection and security than that accorded to nationals of such Contracting State in like circumstances.

Chapter VI OTHER PROVISIONS

Article 16

1. Offences committed on aircraft registered in a Contracting State shall be treated, for the purpose of extradition, as if they had been committed not only in the place in which they have occurred but also in the territory of the State of registration of the aircraft.
2. Without prejudice to the provisions of the preceding paragraph, nothing in this Convention shall be deemed to create an obligation to grant extradition.

Article 17

In taking any measures for investigation or arrest or otherwise exercising jurisdiction in connection with any offence committed on board an aircraft the Contracting States shall pay due regard to the safety and other interests of air navigation and shall so act as to avoid unnecessary delay of the aircraft, passengers, crew or cargo.

Article 18

If Contracting States establish joint air transport operating organizations or international operating agencies, which operate aircraft not registered in any one State those States shall, according to the circumstances of the case, designate the State among them which, for the purposes of this Convention, shall be considered as the State of registration and shall give notice thereof to the International Civil Aviation Organization which shall communicate the notice to all States Parties to this Convention.

Chapter VII FINAL CLAUSES

Article 19

Until the date on which this Convention comes into force in accordance with the provisions of Article 21, it shall remain open for signature on behalf of any State which at that date is a Member of the United Nations or of any of the Specialized Agencies.

Article 20

1. This Convention shall be subject to ratification by the signatory States in accordance with their constitutional procedures.
2. The instruments of ratification shall be deposited with the International Civil Aviation Organization.

Article 21

1. As soon as twelve of the signatory States have deposited their instruments of ratification of this Convention, it shall come into force between them on the ninetieth day after the date of the deposit of the twelfth instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.
2. As soon as this Convention comes into force, it shall be registered with the Secretary- General of the United Nations by the International Civil Aviation Organization.

Article 22

1. This Convention shall, after it has come into force, be open for accession by any State Member of the United Nations or of any of the Specialized Agencies.
2. The accession of a State shall be effected by the deposit of an instrument of accession with the International Civil Aviation Organization and shall take effect on the ninetieth day after the date of such deposit.

Article 23

1. Any Contracting State may denounce this Convention by notification addressed to the International Civil Aviation Organization.
2. Denunciation shall take effect six months after the date of receipt by the International Civil Aviation Organization of the notification of denunciation.

Article 24

1. Any dispute between two or more Contracting States concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State may at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other Contracting States shall not be bound by the preceding paragraph with respect to any Contracting State having made such a reservation.
3. Any Contracting State having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the International Civil Aviation Organization.

Article 25

Except as provided in Article 24 no reservation may be made to this Convention.

Article 26

The International Civil Aviation Organization shall give notice to all States Members of the United Nations or of any of the Specialized Agencies:

- (a) of any signature of this Convention and the date thereof;
- (b) of the deposit of any instrument of ratification or accession and the date thereof;
- (c) of the date on which this Convention comes into force in accordance with Article 21, paragraph 1;
- (d) of the receipt of any notification of denunciation and the date thereof; and
- (e) of the receipt of any declaration or notification made under Article 24 and the date thereof.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

DONE at Tokyo on the fourteenth day of September One Thousand Nine Hundred and Sixty-three in three authentic texts drawn up in the English, French and Spanish languages.

This Convention shall be deposited with the International Civil Aviation Organization with which, in accordance with Article 19, it shall remain open for signature and the said Organization shall send certified copies thereof to all States Members of the United Nations or of any Specialized Agency.

Schedule 4

CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT, SIGNED AT THE HAGUE, ON 16 DECEMBER 1970 (THE HAGUE CONVENTION 1970)

[Section 1 of the Act states:]

["Hague Convention" means the Convention for the Suppression of Unlawful Seizure of Aircraft, done at Hague on 16 December 1970, contained in Schedule 3.]

[In contrast to the Act's definitions of the "Chicago Convention" and the "Transit Agreement" contained in Schedules 1 and 2, respectively, this definition does not refer to amendments to the initial treaty text in relation to the "Hague Convention" as it appears in Schedule 4. This seems to indicate that the legislator did not intend to include amendments in the Schedule. However, so far there has only been one amendment to the Hague Convention (the Protocol to amend the Convention, 2010) to which Namibia has not yet agreed and which is also not yet in force internationally (source: ICAO).]

[Thus, Schedule 4 has been compared against the initial text of the Convention which is made publicly available by the Government of the United Kingdom as the depositary (in addition to the Governments of the United States and Russia (formerly the Soviet Union)) at www.gov.uk/government/uploads/system/uploads/attachment_data/file/269610/Conv_Supp_Unlawful_Seizure_1970.pdf.]

[This Convention is generally referred to in brief as the "Hague Hijacking Convention" rather than the "Hague Convention".]

Preamble

THE STATES PARTIES TO THIS CONVENTION,

[There is no comma at the end of this opening line in the Convention text published by the depositary.]

CONSIDERING that unlawful acts of seizure or exercise of control of aircraft in flight jeopardize the safety of persons and property, seriously affect the operation of air services, and undermine the confidence of the peoples of the world in the safety of civil aviation;

CONSIDERING that the occurrence of such acts is a matter of grave concern;

CONSIDERING that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders;

HAVE AGREED AS FOLLOWS:

Article 1

Any person who on board an aircraft in flight:

- (a) unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act, or
- (b) is an accomplice of a person who performs or attempts to perform any such act

commits an offence (hereinafter referred to as “the offence”).

[In the Government Gazette, paragraph (b) of Article 1 appears combined with the closing line “commits an offence...”. In the Convention text published by the depositary, the closing line is formatted so as to make clear that it completes both paragraphs (a) and (b). The formatting error in the Gazette has been corrected here to prevent confusion.]

Article 2

Each Contracting State undertakes to make the offence punishable by severe penalties.

Article 3

1. For the purposes of this Convention, an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation. In the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board.
2. This Convention shall not apply to aircraft used in military, customs or police services.
3. This Convention shall apply only if the place of take-off or the place of actual landing of the aircraft on board which the offence is committed is situated outside the territory of the State of registration of that aircraft; it shall be immaterial whether the aircraft is engaged in an international or domestic flight.
4. In the cases mentioned in Article 5, this Convention shall not apply if the place of take-off and the place of actual landing of the aircraft on board which the offence is committed are situated within the territory of the same State where that State is one of those referred to in that Article.
5. Notwithstanding paragraphs 3 and 4 of this Article, Articles 6, 7, 8, and 10 shall apply whatever the place of take-off or the place of actual landing of the aircraft, if the offender or the alleged offender is found in the territory of a State other than the State of registration of that aircraft.

[There is no comma after the numeral “8” in the Convention text published by the depositary.]

Article 4

1. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over the offence and any other act of violence against passengers or crew committed by the alleged offender in connection with the offence, in the following cases:
 - (a) when the offence is committed on board an aircraft registered in that State;
 - (b) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;

- (c) when the offence is committed on board an aircraft leased without crew to a lessee who has his principal place of business or, if the lessee has no such place of business, his permanent residence, in that State.
- 2. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offence in the case where the alleged offender is present in its territory and it does not extradite him pursuant to Article 8 to any of the States mentioned in paragraph 1 of this Article.
- 3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 5

The Contracting States which establish joint air transport operating organizations or international operating agencies, which operate aircraft which are subject to joint or international registration shall, by appropriate means, designate for each aircraft the State among them which shall exercise the jurisdiction and have the attributes of the State of registration for the purpose of this Convention and shall give notice thereof to the International Civil Aviation Organization which shall communicate the notice to all States Parties to this Convention.

Article 6

- 1. Upon being satisfied that the circumstances so warrant, any Contracting State in the territory of which the offender or the alleged offender is present, shall take him into custody or take other measures to ensure his presence. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
- 2. Such State shall immediately make a preliminary enquiry into the facts.
- 3. Any person in custody pursuant to paragraph 1 of this Article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national.
- 4. When a State, pursuant to this Article, has taken a person into custody, it shall immediately notify the State of registration of the aircraft, the State mentioned in Article 4, paragraph 1(c), the State of nationality of the detained person and, if it considers it advisable, any other interested States of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary enquiry contemplated in paragraph 2 of this Article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.

Article 8

- 1. The offence shall be deemed to be included as an extraditable offence in any extradition treaty existing between Contracting States. Contracting States undertake to include the offence as an extraditable offence in every extradition treaty to be concluded between them.
- 2. If a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offence. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. Contracting States which do not make extradition conditional on the existence of a treaty shall recognize the offence as an extraditable offence between themselves subject to the conditions provided by the law of the requested State.
4. The offence shall be treated, for the purpose of extradition between Contracting States, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with Article 4, paragraph 1.

Article 9

1. When any of the acts mentioned in Article 1(a) has occurred or is about to occur, Contracting States shall take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his control of the aircraft.
2. In the cases contemplated by the preceding paragraph, any Contracting State in which the aircraft or its passengers or crew are present shall facilitate the continuation of the journey of the passengers and crew as soon as practicable, and shall without delay return the aircraft and its cargo to the persons lawfully entitled to possession.

Article 10

1. Contracting States shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offence and other acts mentioned in Article 4. The law of the State requested shall apply in all cases.
2. The provisions of paragraph 1 of this Article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

Article 11

Each Contracting State shall in accordance with its national law report to the Council of the International Civil Aviation Organization as promptly as possible any relevant information in its possession concerning:

- (a) the circumstances of the offence;
- (b) the action taken pursuant to Article 9;
- (c) the measures taken in relation to the offender or the alleged offender, and, in particular, the results of any extradition proceedings or other legal proceedings.

Article 12

1. Any dispute between two or more Contracting States concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State may at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other Contracting States shall not be bound by the preceding paragraph with respect to any Contracting State having made such a reservation.
3. Any Contracting State having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary Governments.

Article 13

1. This Convention shall be open for signature at The Hague on 16 December 1970, by States participating in the International Conference on Air Law held at The Hague from 1 to 16 December 1970 (hereinafter referred to as The Hague Conference). After 31 December 1970, the Convention shall be open to all States for signature in Moscow, London and Washington. Any State which does not sign this Convention before its entry into force in accordance with paragraph 3 of this Article may accede to it at any time.
2. This Convention shall be subject to ratification by the signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, which are hereby designated the Depositary Governments.
3. This Convention shall enter into force thirty days following the date of the deposit of instruments of ratification by ten States signatory to this Convention which participated in The Hague Conference.
4. For other States, this Convention shall enter into force on the date of entry into force of this Convention in accordance with paragraph 3 of this Article, or thirty days following the date of deposit of their instruments of ratification or accession, whichever is later.
5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or accession, the date of entry into force of this Convention, and other notices.
6. As soon as this Convention comes into force, it shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).

Article 14

1. Any Contracting State may denounce this Convention by written notification to the Depositary Governments.
2. Denunciation shall take effect six months following the date on which notification is received by the Depositary Governments.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorised thereto by their Governments, have signed this Convention.

DONE at The Hague, this sixteenth day of December, one thousand nine hundred and seventy, in three originals, each being drawn up in four authentic texts in the English, French, Russian and Spanish languages.

Schedule 5

CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF CIVIL AVIATION, SIGNED AT MONTREAL, ON 23 SEPTEMBER 1971 (MONTREAL CONVENTION 1971)

[Section 1 of the Act states:]

["Montreal Convention" means the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation done at Montreal on 23 September 1971, contained in Schedule 5.]

[In contrast to the Act's definitions of the "Chicago Convention" and the "Transit Agreement" contained in Schedules 1 and 2, respectively, this definition does not refer to amendments to the initial treaty text in relation to the "Montreal Convention" as it appears in Schedule 4. This seems

to indicate that the legislator did not intend to include amendments in the Schedule. There has so far been one Protocol amending the Convention (the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation done at Montreal on 24 February 1988) to which Namibia has agreed and which is also in force internationally (source: Governments of the United Kingdom and the United States of America, and ICAO which was subsequently added as the depositary to the Protocol). This 1988 Protocol is annexed separately in Schedule 6 of the Act.]

[Thus, Schedule 5 has been compared against the original unamended text of the Convention which is made publicly available by the Government of the United Kingdom as the depositary (in addition to the Governments of the United States and Russia (formerly the Soviet Union)) at www.gov.uk/government/uploads/system/uploads/attachment_data/file/571034/

974_CMND-5524_1971_23_SEP_MONTREAL_CONV_FOR_THE_SUPPRESSION_OF_UNLAWFUL_ACTS_AGAINST_THE_SAFETY_OF_CIVIL_AVIA

The amendments made by the 1988 Protocol are indicated in annotation notes in this Schedule, for convenience.]

[Note that this Convention is generally referred to internationally as the “Sabotage Convention”, whereas the shortened name “Montreal Convention” usually refers to the “Convention for the Unification of Certain Rules relating to International Carriage by Air (Montreal Convention), 1999”.]

THE STATES PARTIES TO THIS CONVENTION,

[There is no comma at the end of this opening line in the Convention text published by the depositary.]

CONSIDERING that unlawful acts against the safety of civil aviation jeopardize the safety of persons and property, seriously affect the operation of air services, and undermine the confidence of the peoples of the world in the safety of civil aviation;

CONSIDERING that the occurrence of such acts is a matter of grave concern;

CONSIDERING that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders;

HAVE AGREED AS FOLLOWS:

Article 1

Any person commits an offence if he unlawfully and intentionally:

- (a) performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or
- (b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or
- (c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or
- (d) destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or

- (e) communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight.

[The 1988 Protocol inserts a new paragraph 1 bis after paragraph 1:]

[1. bis. Any person commits an offence if he unlawfully and intentionally, using any device, substance or weapon:]

[(a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or]

[(b) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport,]

[if such an act endangers or is likely to endanger safety at that airport.]

2. Any person also commits an offence if he:

- (a) attempts to commit any of the offences mentioned in paragraph 1 of this Article; or

[The 1988 Protocol inserts the words “or paragraph 1 bis” after the words “paragraph 1”.]

- (b) is an accomplice of a person who commits or attempts to commit any such offence.

Article 2

For the purposes of this Convention:

- (a) an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation; in the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board;
- (b) an aircraft is considered to be in service from the beginning of the preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight as defined in paragraph (a) of this Article.

Article 3

Each Contracting State undertakes to make the offences mentioned in Article 1 punishable by severe penalties.

Article 4

1. This Convention shall not apply to aircraft used in military, customs or police services.
2. In the cases contemplated in subparagraphs (a), (b), (c) and (e) of paragraph 1 of Article 1, this Convention shall apply, irrespective of whether the aircraft is engaged in an international or domestic flight, only if:
- (a) the place of take-off or landing, actual or intended, of the aircraft is situated outside the territory of the State of registration of that aircraft; or
- (b) the offence is committed in the territory of a State other than the State of registration of the aircraft.
3. Notwithstanding paragraph 2 of this Article, in the cases contemplated in subparagraphs (a), (b), (c) and (e) of paragraph 1 of Article 1, this Convention shall also apply if the offender or the alleged offender is found in the territory of a State other than the State of registration of the aircraft.
4. With respect to the States mentioned in Article 9 and in the cases mentioned in subparagraphs (a), (b), (c) and (e) of paragraph 1 of Article 1, this Convention shall not apply if the places referred to in subparagraph

- (a) of paragraph 2 of this Article are situated within the territory of the same State where that State is one of those referred to in Article 9, unless the offence is committed or the offender or alleged offender is found in the territory of a State other than that State.
5. In the cases contemplated in subparagraph (d) of paragraph 1 of Article 1, this Convention shall apply only if the air navigation facilities are used in international air navigation.
 6. The provisions of paragraphs 2, 3, 4 and 5 of this Article shall also apply in the cases contemplated in paragraph 2 of Article 1.

Article 5

1. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over the offences in the following cases:
 - (a) when the offence is committed in the territory of that State;
 - (b) when the offence is committed against or on board an aircraft registered in that State;
 - (c) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;
 - (d) when the offence is committed against or on board an aircraft leased without crew to a lessee who has his principal place of business or, if the lessee has no such place of business, his permanent residence, in that State.
2. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offences mentioned in Article 1, paragraph 1 (a), (b) and (c), and in Article 1, paragraph 2, in so far as that paragraph relates to those offences, in the case where the alleged offender is present in its territory and it does not extradite him pursuant to Article 8 to any of the States mentioned in paragraph 1 of this Article.

[The 1988 Protocol inserts a new paragraph 2 bis after paragraph 2:]

[2bis. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offences mentioned in Article 1, paragraph 1 bis, and in Article 1, paragraph 2, in so far as that paragraph relates to those offences, in the case where the alleged offender is present in its territory and it does not extradite him pursuant to Article 8 to the State mentioned in paragraph 1 (a) of this Article.]

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 6

1. Upon being satisfied that the circumstances so warrant, any Contracting State in the territory of which the offender or the alleged offender is present, shall take him into custody or take other measures to ensure his presence. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
2. Such State shall immediately make a preliminary enquiry into the facts.
3. Any person in custody pursuant to paragraph 1 of this Article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national.
4. When a State, pursuant to this Article, has taken a person into custody, it shall immediately notify the States mentioned in Article 5, paragraph 1, the State of nationality of the detained person and, if it considers it advisable, any other interested States of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary enquiry contemplated in paragraph 2 of this Article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.

Article 8

1. The offences shall be deemed to be included as extraditable offences in any extradition treaty existing between Contracting States. Contracting States undertake to include the offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. Contracting States which do not make extradition conditional on the existence of a treaty shall recognize the offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Each of the offences shall be treated, for the purpose of extradition between Contracting States, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with Article 5, paragraph 1 (b), (c) and (d).

Article 9

The Contracting States which establish joint air transport operating organizations or international operating agencies, which operate aircraft which are subject to joint or international registration shall, by appropriate means, designate for each aircraft the State among them which shall exercise the jurisdiction and have the attributes of the State of registration for the purpose of this Convention and shall give notice thereof to the International Civil Aviation Organization which shall communicate the notice to all States Parties to this Convention.

Article 10

1. Contracting States shall, in accordance with international and national law, endeavour to take all practicable measures for the purpose of preventing the offences mentioned in Article 1.
2. When, due to the commission of one of the offences mentioned in Article 1, a flight has been delayed or interrupted, any Contracting State in whose territory the aircraft or passengers or crew are present shall facilitate the continuation of the journey of the passengers and crew as soon as practicable, and shall without delay return the aircraft and its cargo to the persons lawfully entitled to possession.

Article 11

1. Contracting States shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences. The law of the State requested shall apply in all cases.
2. The provisions of paragraph 1 of this Article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

Article 12

Any Contracting State having reason to believe that one of the offences mentioned in Article 1 will be committed shall, in accordance with its national law, furnish any relevant information in its possession to those States which it believes would be the States mentioned in Article 5, paragraph 1.

Article 13

Each Contracting State shall in accordance with its national law report to the Council of the International Civil Aviation Organization as promptly as possible any relevant information in its possession concerning:

- (a) the circumstances of the offence;
- (b) the action taken pursuant to Article 10, paragraph 2;
- (c) the measures taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.

Article 14

1. Any dispute between two or more Contracting States concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State may at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other Contracting States shall not be bound by the preceding paragraph with respect to any Contracting State having made such a reservation.
3. Any Contracting State having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary Governments.

Article 15

1. This Convention shall be open for signature at Montreal on 23 September 1971, by States participating in the International Conference on Air Law held at Montreal from 8 to 23 September 1971 (hereinafter referred to as the Montreal Conference). After 10 October 1971, the Convention shall be open to all States for signature in Moscow, London and Washington. Any State which does not sign this Convention before its entry into force in accordance with paragraph 3 of this Article may accede to it at any time.
2. This Convention shall be subject to ratification by the signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, which are hereby designated the Depositary Governments.
3. This Convention shall enter into force thirty days following the date of the deposit of instruments of ratification by ten States signatory to this Convention which participated in the Montreal Conference.
4. For other States, this Convention shall enter into force on the date of entry into force of this Convention in accordance with paragraph 3 of this Article, or thirty days following the date of deposit of their instruments of ratification or accession, whichever is later.
5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or accession, the date of entry into force of this Convention, and other notices.

6. As soon as this Convention comes into force, it shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).

Article 16

1. Any Contracting State may denounce this Convention by written notification to the Depositary Governments.
2. Denunciation shall take effect six months following the date on which notification is received by the Depositary Governments.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their Governments, have signed this Convention.

DONE at Montreal, this twenty-third day of September, one thousand nine hundred and seventy-one, in three originals, each being drawn up in four authentic texts in the English, French, Russian and Spanish languages.

Schedule 6

1988 PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS OF VIOLENCE AT AIRPORTS SERVING INTERNATIONAL CIVIL AVIATION, SUPPLEMENTARY TO THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF CIVIL AVIATION DONE AT MONTREAL ON 23 SEPTEMBER 1971

[Section 1 of the Act states: “Montreal Protocol” means the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation done at Montreal on 24 February 1988, contained in Schedule 6.]

[This Protocol amends the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation contained in Schedule 6. It does not have independent relevance. The text of the Protocol in the Government Gazette has been compared against the text of the Protocol which is made publicly available by the Government of the United Kingdom as the depositary (in addition to the Governments of the United States and Russia (formerly the Soviet Union), and the ICAO which was subsequently added as the depositary) at www.gov.uk/government/uploads/system/uploads/attachment_data/file/269613/Protocol_Unlawful.pdf.]

[This Protocol does not seem to have a short name in common use at the international level, but “Sabotage Protocol” would probably be a more appropriate short name than “Montreal Protocol”.]

THE STATES PARTIES TO THIS PROTOCOL

CONSIDERING that unlawful acts of violence which endanger or are likely to endanger the safety of persons at airports serving international civil aviation or which jeopardize the safe operation of such airports undermine the confidence of the peoples of the world in safety at such airports and disturb the safe and orderly conduct of civil aviation for all States;

CONSIDERING that the occurrence of such acts is a matter of grave concern to the international community and that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders;

CONSIDERING that it is necessary to adopt provisions supplementary to those of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971, to deal with such unlawful acts of violence at airports serving international civil aviation;

HAVE AGREED AS FOLLOWS:

Article I

This Protocol supplements the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971 (hereinafter referred to as “the Convention”), and, as between the Parties to this Protocol, the Convention and the Protocol shall be read and interpreted together as one single instrument.

Article II

1. In Article 1 of the Convention, the following shall be added as new paragraph 1 bis:

“1 bis. Any person commits an offence if he unlawfully and intentionally, using any device, substance or weapon:

- (a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or
- (b) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport, if such an act endangers or is likely to endanger safety at that airport.”

2. In paragraph 2 (a) of Article 1 of the Convention, the following words shall be inserted after the words “paragraph 1”:

“or paragraph 1 bis”.

[The Latin term “bis” is italicised in the text of the Protocol published by the depositary.]

Article III

In Article 5 of the Convention, the following shall be added as paragraph 2 bis:

“2 bis. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offences mentioned in Article 1, paragraph 1 bis, and in Article 1, paragraph 2, in so far as that paragraph relates to those offences, in the case where the alleged offender is present in its territory and it does not extradite him pursuant to Article 8 to the State mentioned in paragraph 1 (a) of this Article.”

[The Latin term “bis” is italicised in the text of the Protocol published by the depositary.]

Article IV

This Protocol shall be open for signature at Montreal on 24 February 1988 by States participating in the International Conference on Air Law held at Montreal from 9 to 24 February 1988. After 1 March 1988, the Protocol shall be open for signature to all States in London, Moscow, Washington and Montreal, until it enters into force in accordance with Article VI.

Article V

1. This Protocol shall be subject to ratification by the signatory States.
2. Any State which is not a Contracting State to the Convention may ratify this Protocol if at the same time it ratifies or accedes to the Convention in accordance with Article 15 thereof.
3. Instruments of ratification shall be deposited with the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America or with the International Civil Aviation Organization, which are hereby designated the Depositaries.

Article VI

1. As soon as ten of the signatory States have deposited their instruments of ratification of this Protocol, it shall enter into force between them on the thirtieth day after the date of the deposit of the tenth instrument of ratification. It shall enter into force for each State which deposits its instrument of ratification after that date on the thirtieth day after deposit of its instrument of ratification.
2. As soon as this Protocol enters into force, it shall be registered by the Depositaries pursuant to Article 102 of the Charter of the United Nations and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).

Article VII

1. This Protocol shall, after it has entered into force, be open for accession by any non- signatory State.
2. Any State which is not a Contracting State to the Convention may accede to this Protocol if at the same time it ratifies or accedes to the Convention in accordance with Article 15 thereof.
3. Instruments of accession shall be deposited with the Depositaries and accession shall take effect on the thirtieth day after the deposit.

Article VIII

1. Any Party to this Protocol may denounce it by written notification addressed to the Depositaries.
2. Denunciation shall take effect six months following the date on which notification is received by the Depositaries.
3. Denunciation of this Protocol shall not of itself have the effect of denunciation of the Convention.
4. Denunciation of the Convention by a Contracting State to the Convention as supplemented by this Protocol shall also have the effect of denunciation of this Protocol.

Article IX

1. The Depositaries shall promptly inform all signatory and acceding States to this Protocol and all signatory and acceding States to the Convention:
 - (a) of the date of each signature and the date of deposit of each instrument of ratification of, or accession to, this Protocol, and
 - (b) of the receipt of any notification of denunciation of this Protocol and the date thereof.
2. The Depositaries shall also notify the States referred to in paragraph 1 of the date on which this Protocol enters into force in accordance with Article VI.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their Governments, have signed this Protocol.

DONE at Montreal on the twenty-fourth day of February of the year One Thousand Nine Hundred and Eighty-eight, in four originals, each being drawn up in four authentic texts in the English, French, Russian and Spanish languages.

Schedule 7

Laws Repealed and Amended (Section 235)

Number and year of law	Short title	Extent of repeal or amendment
Act No. 74 of 1962	Aviation Act, 1962	The repeal of the whole
Act No. 12 of 1965	Aviation Amendment Act, 1965	The repeal of the whole
Act No. 83 of 1969	Aviation Amendment Act, 1969	The repeal of the whole
Act No. 10 of 1972	Civil Aviation Offences Act, 1972	The repeal of the whole
Act No. 62 of 1973	General Law Amendment Act, 1973	The repeal of section 24
Act No. 29 of 1974	General Law Amendment Act, 1974	The repeal of section 19(a) and (b)
Act No. 10 of 1991	Aviation Amendment Act, 1991	The repeal of the whole
Act No. 9 of 1992	Civil Aviation Offences Amendment Act, 1992	The repeal of the whole
Act No. 6 of 1998	Intoxicating Liquor Act, 1998 [The title of this Act is actually "Liquor Act".]	The repeal of section 80 and 81(a), (b) and (c) [sections 80 and 81 should logically have been repealed in their entirety]
Act No. 25 of 1998	Airports Company Act, 1998	The repeal of section 16(a) and (b) and section 17 [sections 16, 17 and 18 should logically have been repealed in their entirety]
Act No. 27 of 1998	Aviation Amendment Act, 1998	The repeal of the whole