

CIVIL AVIATION AUTHORITY ACT, 2009

(Act No. 10 of 2009)

AN ACT

ENTITLED

AN ACT to provide for the establishment of an independent Authority on civil aviation, implement international conventions on civil aviation and other incidental matters.

ENACTED by the King and the Parliament of Swaziland.

Date of commencement: 7th December, 2009

Arrangement of Sections

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PART I

PRELIMINARY PROVISIONS

Short title and commencement.

1. (1) This Act may be cited as the Civil Aviation Authority Act, 2009.
- (2) This Act shall come into force upon publication of a notice in the *Gazette* by the Minister and the notice may bring into force any designated sections or Parts of this Act at different intervals.

Interpretation.

2. In this Act, unless the context otherwise requires—

“Aircraft in flight” means the period from the moment when the external doors of the aircraft are closed following embarkation until the moment when any external door is opened for disembarkation, and in the case of forced landing any period until an officer authorised by the Authority takes over responsibility for the aircraft;

“Authority” means the Civil Aviation Authority established under section 4 of this Act;

“Annexes to the Chicago Convention” means the documents issued by the International Civil Aviation Organization (ICAO) containing the Standards and Recommended Practices applicable to civil aviation;

“Board” means the Board of the Civil Aviation Authority appointed in terms of section 18 of this Act;

“Chicago Convention” means the Convention on International Civil Aviation drawn up at Chicago and signed on behalf of Swaziland by the United Kingdom on the 7th December, 1944, and includes any amendments and additions as may be declared under this Act and set out in the First Schedule to this Act;

“Civil Aviation Committee” means a Committee established in terms of section 14 of this Act;

“deposited sum” means the sum deposited in terms of section 94 of this Act;

“Director General” means the person who is appointed under section 27 of this Act;

“flight path” means the level of passage of an aircraft through the air;

“*Gazette*” means the Swaziland Government *Gazette*;

“ICAO” means International Civil Aviation Organization;

“magistrates’ court” means a court established under the Magistrates Court Act;

“Minister” means the Minister responsible for civil aviation matters;

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

“restructuring plan” means a plan to give effect to the institutional and financial reform of a state-owned enterprise or company and the release of individual assets or mobility services owned or provided by such enterprise or company;

“State” means the Kingdom of Swaziland;

“Transit Agreement” means the International Air Services Transit Agreement drawn up and signed by the United Kingdom on behalf of Swaziland at Chicago on the 7th December, 1944, together with such amendments and additions as may be declared under this Act;

“validation” means the written acceptance of an action of the civil aviation authority of another country in lieu of an action that this Act assigns to the Director General.

Application.

3. (1) This Act shall apply to—
 - (a) aerodromes and airport operators;
 - (b) airlines and general aviation service operators established or operating in Swaziland;
 - (c) aircrafts registered by the Authority or any foreign aircraft within Swaziland;
 - (d) aviation personnel and training establishments;
 - (e) organisations involved in the design, maintenance, repair and modification of aircraft parts or components; and
 - (f) air traffic and air navigation facilities and services operators.
- (2) Notwithstanding subsection (1), the Director General, acting with the approval of the Board may, by agreement with any appropriate foreign aeronautical authority—
 - (a) transfer to the foreign aeronautical authority in the country of a foreign operator in whole or part of the responsibility for a Swaziland registered aircraft operated by that foreign operator that the Director General has under this Act;
 - (b) accept on behalf of the Authority in whole or part of the responsibility for foreign registered aircraft operated by a Swazi operator that arises under this Act;
 - (c) transfer to the foreign aeronautical authority in whole or part the powers and functions of the Authority in respect of Accident Investigation;
 - (d) transfer to the foreign aeronautical authority in whole or part the powers and functions of the Authority in respect of the air traffic services;
 - (e) transfer to the foreign aeronautical authority in whole or part the powers and functions of the Authority in respect of search and rescue.

(3) This Act shall apply to a state owned aircraft registered as civilian aircraft, and to military aircraft operating in controlled airspace.

PART II

ESTABLISHMENT OF THE CIVIL AVIATION AUTHORITY

Establishment of the Authority.

4. (1) There is established an authority to be known as the Civil Aviation Authority.
- (2) The Authority shall be an independent body corporate, having perpetual succession and a common seal capable of suing and being sued in its name.

Constitution of the Authority.

5. The Authority shall be composed of—
 - (a) the Board;
 - (b) Director General; and
 - (c) such professional, technical, administrative and support staff as are required for the proper performance of its functions.

Objectives of the Authority.

6. The Authority shall perform its functions in a manner which it considers is best calculated to—
 - (a) promote safe, secure, regular and efficient air transport services to, from and within Swaziland;
 - (b) meet and to the extent possible exceed the Standards and Recommended Practices prescribed by ICAO in the Annexes to the Chicago Convention;
 - (c) provide adequate, efficient and quality airport facilities and services to the users;
 - (d) develop an airport as a secondary hub;
 - (e) maintain a qualified, cost sensitive and motivated workforce;
 - (f) restructure civil aviation activities;
 - (g) improve the financial and economic viability of civil aviation; and
 - (h) further the interests of users of air transport services.

Objectives of the Authority on economic regulation.

7. The Authority shall perform its functions on economic regulation of air transport to, from and within Swaziland in a manner which it considers is best calculated to—
 - (a) foster the development of Air Transport;
 - (b) encourage competition;
 - (c) encourage economy and efficiency in Air Transport;
 - (d) encourage international air services to and from Swaziland; and
 - (e) facilitate the development of tourism in Swaziland.

Responsibility of the Authority on international obligations.

8. (1) The Authority shall be responsible for all civil aviation matters and the administration of this Act.

(2) In exercising and performing powers and duties under this Act, the Authority shall advise the Minister on compliance with any international agreement in a schedule to this Act and, in particular, may, as the need arises or upon request, advise on—

- (a) the feasibility of concluding international air services agreements which do not require designation of airlines;
- (b) the liberalisation of air traffic rights on a bilateral or regional basis in accordance with regional or sub-regional agreements and understanding to which Swaziland is a party;
- (c) the implementation of International Air Transport Agreements;
- (d) the feasibility of liberalising international air service provision through the introduction of economic considerations;
- (e) monitor international air rates and fares to prevent dumping or predatory practices; or
- (f) ensure that airport charges for aviation services and other miscellaneous charges are equitable between different categories of user and individual users.

Functions of Authority on applications, etc.

9. (1) The Authority may—

- (a) approve an application submitted by a foreign registered airline for the provision of international or domestic air services;
- (b) approve an application submitted by a Swaziland registered airline for the provision of international or domestic services;
- (c) order the arrival and departure times of flights to be changed;
- (d) set the framework of lower and upper limits for capacity and frequency of services;
- (e) set any condition regarding the fares to be charged on a scheduled service;
- (f) suspend any provision of a commercial agreement between international air service providers, which is anti-competitive, restrictive or revenue pooling in nature; and
- (g) order any Airport to increase or reduce any charge for any type of service or concession.

(2) Notwithstanding any provision of this section, a licence may not be granted to any applicant who fails to meet in full the required safety requirements for the licence.

Functions of the Authority on aviation safety and environment.

10. In relation to safety and the environment, the Authority shall—

- (a) ensure aviation safety and environmental planning in respect of civil aviation;
- (b) issue licences for Flight Crew Members;

- (c) issue licences for Aircraft Maintenance Engineers;
- (d) issue licences for Air Traffic Controllers;
- (e) issue licences for Aircraft Maintenance Organisations;
- (f) issue certification for aircraft airworthiness;
- (g) issue certification for aircraft manufacturing, processing and test organisations; and
- (h) issue certification for training organisations.

Functions of the Authority on airports.

11. (1) In relation to airports, the Authority may—
- (a) issue licences for airports;
 - (b) approve airport safety plans;
 - (c) advise the Minister, upon request, on the degree to which an airport restructuring plan complies with the policy of the Government, this Act and other applicable law;
 - (d) monitor the implementation of airport diversification plans; and
 - (e) monitor and determine the reasonableness of airport charges.
- (2) A person shall not use any land or building as an aerodrome unless it has been approved, registered or licensed in terms of the regulations.

Functions of the Authority on air traffic and navigation services.

12. In relation to air traffic and navigation services, the Authority—
- (a) shall designate air space and an airport for the purpose of providing air traffic and navigation services;
 - (b) may issue licences for the provision of air traffic and navigation services;
 - (c) may advise the Minister, upon request, on the degree to which an air traffic and navigation services restructuring plan complies with the applicable law;
 - (d) shall monitor the implementation of an air traffic and navigation services diversification plan; and
 - (e) shall monitor and determine the reasonableness of air traffic and navigation services charges.

Powers of the Authority.

13. Without derogating from its power generally to perform the juristic acts of a juristic person, the Authority shall have the power to do all things necessary or convenient to be done for or in connection with the performance of its functions, including to—
- (a) enter into contract, sue and be sued and submit disputes to arbitration;
 - (b) acquire, hold, dispose of and deal with property as its activities require;
 - (c) levy and collect fees, rents, other charges payable for services rendered or facilities provided and establish the terms and conditions for the supply of such services and facilities;

- (d) engage consultants, appoint agents and attorneys, and appoint personnel, on such terms condition and remuneration as the Authority specify;
- (e) operate and manage airports, air traffic, and air navigation services, for such period of time as is required until the restructuring plans are completed and to advise the Minister regularly on the progress of the restructuring plans;
- (f) issue compliance directives; and
- (g) conduct hearings.

Civil Aviation Committee.

14. (1) The Authority shall establish, by notice in the *Gazette*, a Civil Aviation Committee to perform such functions as may be assigned by Authority under this Act.

(2) The Civil Aviation Committee shall consist of as many persons as the Authority may determine, which shall include equal representation of persons nominated by—

- (a) commercial airport operators;
- (b) organisations, bodies or persons which, in the opinion of the Authority are representative of airport users; and
- (c) the Authority.

(3) The Director General shall designate an officer of the Authority to be the Chairperson.

(4) The Chairperson shall convene meetings of the Civil Aviation Committee at the request of at least one-third of the members of the Civil Aviation Committee.

(5) The members of the Civil Aviation Committee shall hold office for a period of two (2) years and shall be eligible for re-appointment by the Authority in consultation with the Board.

(6) The members of the Civil Aviation Committee shall appoint a Secretary at the first meeting of the Civil Aviation Committee who shall be an employee of the Authority.

(7) The Civil Aviation Committee shall strive to achieve consensus on all matters which it is empowered to discuss in terms of this Act and for this purpose, the Chairperson shall afford every member a reasonable opportunity to explain his point of view.

(8) Where a consensus cannot be achieved, the Secretary shall note the opinion of each member in the minutes of the meeting.

(9) The Civil Aviation Committee may, acting unanimously, co-opt additional members, provided that the number of co-opted members may not exceed one-third of the total number of members.

Functions of the Civil Aviation Committee.

15. The Civil Aviation Committee shall—

- (a) assist a commercial airport operator to provide a service targeted to the needs of its clients;
- (b) improve understanding regarding the needs of airport users;
- (c) consider and submit a recommendation to a commercial airport operator regarding a proposal to amend a charge;

- (d) advise a commercial airport operator regarding the utilisation of airport land or facilities including the expansion of airport infrastructure, an alteration in the use of airport infrastructure or the closure of airport infrastructure;
- (e) collectively debate and make inputs concerning airspace management needs; and
- (f) facilitate the implementation of this Act.

Committee meetings convened by the Authority.

16. (1) The Authority may convene a Civil Aviation Committee conference or workshops in order to promote the dissemination of information, discussion and consensus regarding economic issues, aviation safety and environmental issues.

(2) The Authority shall endeavour to ensure that conferences and workshops draw attendance from all stakeholder groups, in particular operators, users and labour.

(3) The Authority may, in response to the resolutions adopted by a Civil Aviation Committee meeting or workshop—

- (a) amend a performance or fitness standard; or
- (b) issue a directive or amend an issued directive.

Technical Committee.

17. (1) The Authority, in consultation with the Minister, shall establish a Technical Committee composed of representatives of relevant Government departments, the Authority and members drawn from the Civil Aviation Committee.

(2) The Technical Committee shall act as advisor to the Minister regarding the implementation and compliance with any international agreement on civil aviation to which Swaziland has is a party.

(3) The Director General shall specify a time scale for regular reporting by the Technical Committee on the manner in which it carries out its functions.

(4) The Technical Committee shall appoint its own Chairperson and determine its procedure.

(5) The Technical Committee shall meet at such intervals as may be required to comply with the timescale established by the Director General.

(6) The Technical Committee shall advise the Minister on the issuance of instructions, by notice in the *Gazette*, as appear to him necessary for carrying out the Chicago Convention or the Transit Agreement and for giving effect or to any of the provisions.

PART III

APPOINTMENT OF THE BOARD

Appointment of the Board.

18. (1) The Minister shall appoint, in terms of the Public Enterprises (Control and Monitoring) Act, members of the Board.

(2) The Board shall hold office on such terms and conditions as are determined by the Minister in writing.

- (3) The Minister shall designate one of the members of the Board as the Chairperson.

Composition.

19. (1) The Board shall consist of not less than six (6) and not more than nine (9) persons comprising of—

- (a) a Chairperson, who shall have expertise in civil aviation;
- (b) a legal practitioner;
- (c) a qualified accountant;
- (d) an economist;
- (e) one (1) person with technical expertise in a field related to aviation;
- (f) a representative nominated by the Minister for Finance;
- (g) two (2) people of high moral character and integrity in the conduct of public affairs who shall be appointed by the Minister; and
- (h) the Director General who shall be an *ex officio* member.

(2) When a vacancy occurs on the Board, for any reason, the Minister shall appoint within three (3) months such additional person as may be necessary to ensure the composition of the Board remains in accordance with subsection (1).

Qualifications of members of the Board.

20. (1) Before an appointment is made, the Minister shall satisfy himself as to the fitness of a person for the efficient discharge of the duties vested in the Board and his management or technical expertise in a field related to aviation.

(2) A person shall not be eligible for appointment as a member of the Board if that person is—

- (a) a Member of Parliament or a council of a Local Government Authority;
- (b) has any interest, whether monetary or otherwise, in any transport-related enterprise, which conflicts or may conflict with his duties as a Board Member; and
- (c) has at any time been or is convicted, whether in the Swaziland or elsewhere of theft, fraud, forgery or perjury, corruption or an act of terrorism.

Tenure of office.

21. (1) A member of the Board shall hold office for a period determined by the Minister, which period may not be less than three (3) years and not exceeding five (5) years.

(2) A member of the Board shall be eligible for re-appointment at the discretion of the Minister.

Vacation of office.

22. A member of the Board shall vacate office—

- (a) upon expiry of the term of appointment of the member, unless re-appointed;
- (b) if the member is incapacitated by physical or mental illness;

- (c) if the estate of the member is sequestrated;
- (d) if the member becomes a Member of Parliament or a council of a Local Government Authority;
- (e) if the member acquires any interest, whether monetary or otherwise, in any transport related enterprise, which conflicts or may conflict with his duties as a Board Member; or
- (f) if the member is convicted in Swaziland or elsewhere, of theft, fraud, forgery or perjury, corruption or an act of terrorism.

Removal from office.

23. The Minister may remove a member of the Board from office if that member—
- (a) fails to perform his duties diligently or efficiently; or
 - (b) has been absent without the permission of the Chairperson from three (3) consecutive meetings of the Board, without good reason; or
 - (c) fails to vacate his office in accordance with section 22.

Resignation from office.

24. A member of the Board may resign from office upon giving a written notice of one (1) month to the Minister.

Powers and functions of the Board.

25. The Board shall—
- (a) be responsible to the Minister;
 - (b) exercise the powers, functions and duties of the Authority specified in this Act and such other duties assigned to the Authority;
 - (c) ensure that Authority performs its functions in a proper, efficient and effective manner;
 - (d) recommend the appointment and removal of the Director General;
 - (e) give directives to the Director General;
 - (f) consider and approve business plans prepared by the Director General, the annual budget, internal rules and regulations;
 - (g) approve the annual report for submission to the Minister;
 - (h) approve the internal rules and regulations of the Authority; and
 - (i) give policy direction to the Authority.

Meetings of the Board.

26. (1) The Board shall hold such meetings as are necessary for the efficient performance of its functions.
- (2) The Chairperson—
- (a) may convene a meeting at any time by giving two (2) weeks written notice to the members of the Board; and

(b) shall convene such a meeting if he receives a written request signed by at least two (2) members.

(3) The Board shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of the business at its meetings as may be provided by its internal rules and regulations.

(4) The Board shall elect a Deputy-Chairperson at its first meeting, who shall act as Chairperson in the absence of the Chairperson.

(5) A quorum for any meeting of the Board is a majority of the appointed members of the Board.

(6) Decisions of the Board shall be taken by a majority vote of the members of the Board present and voting at a meeting, provided there is a quorum.

(7) In the event of an equality of votes, the Chairperson shall have and exercise a casting vote.

(8) The Board may, for the purpose of dealing with any matter before it, adopt its own internal rules and procedures.

PART IV

APPOINTMENT OF DIRECTOR GENERAL

Appointment of Director General.

27. (1) The Minister shall, on the recommendation of the Board, appoint a Director General.

(2) The Director General shall hold office for a period not exceeding five (5) years.

(3) Director General may vacate office and may not otherwise be removed except in accordance with sections 22 and 23.

(4) A Director General may be re-appointed after the expiration of the appointment.

Qualifications of Director General.

28. (1) The Director General shall be appointed with due regard to fitness for the efficient discharge of the powers and duties vested in and imposed by this Act.

(2) In determining the fitness of the Director General, the minimum qualifications of the Director General shall be a degree in a relevant field or equivalent.

(3) At the time of nomination, the Director General shall have at least ten years management experience in an aviation field or similar technical experience in a field related to aviation.

(4) The Director General shall have no monetary interest in or own any stocks or shares of any aeronautical enterprise nor shall the Director General engage in any other business, vocation or employment which is likely to create a conflict of interest with the position, without the prior approval of the Board.

Terms and conditions of employment.

29. (1) The Director General shall hold office on such terms and conditions, including remuneration and allowances as the Minister, after consultation with the Minister of Finance, may determine.

(2) The Director General may be appointed subject to the conclusion of a performance contract between the Director General and the Minister.

Dismissal.

30. The Minister may not dismiss the Director General unless—

- (a) a notice setting forth the reasons for dismissal has been served on the Director General;
- (b) the Director General has been allowed a fair hearing before the Board; and
- (c) due consideration has been given to the recommendations made by the Board.

Powers and duties of the Director General.

31. (1) The Director General is the Chief Executive Officer of the Authority and shall be responsible for the exercise of the powers and the discharge of the duties of the Authority subject to the overall control and supervision of the Board.

(2) The Director General shall have control over the personnel and activities of the Authority.

(3) The Director General shall have the power to perform acts, conduct investigations, issue and amend orders and directives, make and amend general or special rules and procedures pursuant to and in accordance with the provisions of this Act as the Director General shall deem necessary.

(4) Without limiting the generality of subsection (3), the Director General shall—

- (a) organise, direct and administer the day-to-day activities of the Authority;
- (b) represent the Authority in all its dealings with third parties and in legal proceeding brought by or against the Authority;
- (c) develop economic policies and strategies with respect to air transport;
- (d) co-ordinate air transport policy and regulation with other governmental entities such as those responsible for trade and commerce, tourism, financial controls, taxation, national development and any other field;
- (e) prepare and, after approval of the Board, submit to the Minister, policies, programmes and detailed annual budgets and ensure their implementation;
- (f) follow-up, study operational activity relating to civil aviation and submit reports and proposals, after the approval the Board, submit to the Minister;
- (g) conduct hearings and investigations necessary to the performance of duties under this Act;
- (h) collect, regularly, information and statistics relating to civil air transport;
- (i) effect payments in accordance with the approved annual budget and work programme of the Authority;

- (j) prepare and submit to the Board the fees and charges to be collected by the Authority and implement the collection upon approval of the Minister through publication in the appropriate aeronautical information publication;
- (k) co-ordinate policy and legal issues relating to civil aviation; and
- (l) perform such other functions as may be assigned to him by the Board.

Delegation of functions to employees.

32. The Director General may—

- (a) delegate any part of his functions to the department heads and other authorised personnel of the Authority provided that the person who acts on behalf of the Director General in his absence shall be subject to prior approval by the Board;
- (b) subject to such regulations, supervision and review as may be prescribed, authorise the performance by any officer, employee or administrative unit under the jurisdiction of the Director General of any function under this Act.

Delegation to private persons.

33. (1) The Director General may, subject to subsection (2), delegate any assigned powers and duties to any qualified private person, subject to such regulation, supervision and review as may be prescribed.

(2) The Director General shall ensure that functions are not delegated in a way that air operators, aerial work or general aviation operators and maintenance facilities providers, in effect, regulate themselves or have any conflict of interest in the functions they perform.

(3) A delegation under this section shall, until revoked, continue in force according to its tenor, notwithstanding the fact that the person by whom it was made may cease to hold office and shall continue to have effect as if made by the person for the time being holding that office.

(4) A person purporting to act under any delegation under this section shall when reasonably requested produce evidence of his authority to do so.

(5) A delegation under this section shall be in writing.

Publications.

34. The Director General shall provide for the publication of—

- (a) reports, orders, decisions, rules and regulations issued under this Act in such form and manner as may be best adapted for public information and use;
- (b) aeronautical information of a lasting nature, which shall be binding on any person engaged in civil aviation activities within the Swaziland Air Space; and
- (c) technical guidance documents, rules, standards, procedures, instructions and aeronautical information and other incidental matters.

Dissemination of meteorological data.

35. The Authority shall, in accordance with National Meteorological Service laws, disseminate meteorological information and data as may be necessary to ensure the safety of civil aviation operating to, from or within Swaziland.

Business and operational plan.

36. (1) The Director General shall cause to be prepared and submitted to the Board, at least three months before the commencement of the financial year of the Authority, the proposed business and operational plan for that financial year, stating the—

- (a) objectives to be achieved during the financial year;
- (b) assumptions about the operational environment of the Authority and review of performance against previous plans;
- (c) strategies and policies for achieving these objectives and analysis of risk factors likely to affect safety in the aviation industry;
- (d) targets and criteria for assessing the performance of the Authority; human resource strategies and industrial relations strategies; and
- (e) estimates of revenue and expenditure and the sources of funding of the planned activities.

(2) The Director General shall, upon the approval by the Board, submit the final business and operational plan.

(3) The Director General shall submit to the Board and the Minister operational reports and other reports as required by the Board or the Minister.

(4) The Director General shall keep the Board informed, through regular reporting, about any significant changes to the plan and matters that arise that might significantly affect the achievement of the objectives of the plan or this Act.

CO-OPERATION WITH OTHER AGENCIES

Exchange of resources.

37. The Director General shall have the power to use the available services, equipment, personnel and facilities of other agencies of the Government with their consent, on a reimbursable basis when appropriate, and on a similar basis to co-operate with those agencies in the establishment and use of services, equipment and facilities of the Authority.

Exchange of information with foreign governments.

38. The Director General shall have the power to exchange with foreign Governments, through appropriate agencies of the Government of Swaziland, information pertaining to civil aviation.

Co-ordination and facilitation.

39. (1) The Director General shall co-ordinate national, and participate in regional initiatives, to promote harmonised—

- (a) safety standards and recommended practices;

- (b) regulation of air services; and
- (c) regulatory philosophies and approaches.

(2) Where necessary, the Authority may confer with or hold joint hearings with any Government agency or department, in connection with any matter arising under this Act within its jurisdiction and to avail itself of the co-operation services, records and facilities of such agencies or departments in the administration and enforcement of the provisions of this Act.

Acquisition of property.

40. The Director General may, where appropriate and upon the approval of the Board—
- (a) accept on behalf of the Authority, any gift or donation of money or other property, real or personal, or of services; and
 - (b) acquire by purchase, lease or otherwise, personal and real property or interests.

Authorisation to contract.

41. The Director General is authorised, subject to available appropriations and applicable laws of Swaziland, and in furtherance of the proper exercise of assigned powers and duties under this Act, to contract or otherwise arrange for the services of private persons and private, public or governmental organisations.

PART V

SAFETY REGULATION OF CIVIL AVIATION

Promotion of safety.

42. The Authority shall have the power and duty to promote safety of flight of civil aircraft by recommending to the Minister to prescribe and revise from time to time as necessary—
- (a) reasonable rules and regulations implementing, as a minimum, the standards of the Annexes to the Chicago Convention; and
 - (b) such other reasonable rules, regulations or minimum standards governing other practices, methods, and procedures as the Authority may find necessary to provide adequately for safety in civil aviation.

Functions of the Authority.

43. The Authority shall, in the performance of its function, subject to this Act, regulate—
- (a) the licensing of personnel;
 - (b) rules of the air;
 - (c) meteorological service for international air navigation;
 - (d) aeronautical charts;
 - (e) units of measurement to be used in air and ground operations;
 - (f) operation of aircraft;
 - (g) aircraft nationality and registration marks;

- (h) airworthiness of aircraft;
- (i) facilitation of international air traffic;
- (j) aeronautical telecommunications;
- (k) air traffic services;
- (l) search and rescue;
- (m) aircraft accident and incident investigation;
- (n) aerodromes;
- (o) aeronautical information services;
- (p) environmental protection;
- (q) security; and
- (r) the safe transport of dangerous goods by air.

Issue of air service licences.

44. (1) The Authority may issue an air service licence to any operator for a service commencing, calling at or terminating in Swaziland, or for any service wholly within Swaziland, on such terms and conditions the Authority may consider fit.

(2) Without prejudice to the generality of subsection (1), such conditions may include—

- (a) maximum or minimum frequency or both;
- (b) use of specific aircraft category or type;
- (c) number of seats per aircraft;
- (d) arrival and departure times at airports in Swaziland;
- (e) type of international air service;
- (f) the commencement date;
- (g) the termination date;
- (h) the fares to be charged;
- (i) evidence of compliance with ICAO safety standards; and
- (j) evidence of financial security, guarantees or insurance.

(3) The Authority may make such rules as it sees fit relating to the conditions appertaining to the issue of air service licences.

(4) A licence shall not come into force until the fee prescribed by the Authority has been paid to the Authority.

(5) If a licence is issued and traffic does not pass for a period exceeding one (1) calendar year, the licence shall be automatically revoked.

(6) If a licensee intends to vary the terms of his licence at any time, he shall make application to the Authority in the prescribed manner.

(7) If a licence application is refused or approved only with modification, the Authority shall advise the applicant of the grounds for its refusal.

(8) If a licensee breaches any of the licence conditions, the Authority may—

- (a) direct that licensee to comply with such condition within a period determined by the Authority;
- (b) suspend or amend the licence conditions as determined by the Authority; or
- (c) revoke the licence.

(9) The Authority may verify a foreign airline licence held by a foreign designated operator.

(10) A foreign airline licensee shall, on a reciprocal basis, be allowed to establish offices in Swaziland for the promotion and sale of air transportation services and may, introduce and maintain in Swaziland managerial, commercial, operational and technical staff as required for the provision of air services.

(11) A licensee has the right to engage in the sale of air services in Swaziland or to appoint agents to sell such services on its behalf.

Transport of dangerous goods by air.

45. (1) The carriage of dangerous goods by air to, from or within Swaziland is prohibited, except as provided in subsections (3) and (4).

(2) Dangerous goods under subsection (1) comprise—

- (a) explosives of all kinds, including ammunition;
- (b) compressed or liquefied gases, which may be toxic or flammable;
- (c) flammable liquids, including gasoline, lacquers and paint thinners;
- (d) flammable solids, spontaneously combustible materials and materials which on contact with water, emit flammable gases;
- (e) oxidising materials and organic peroxides;
- (f) poisonous or toxic substances, including pesticides and compound containing mercury, and infectious substances;
- (g) radioactive materials, including radioactive isotopes and smoke detectors;
- (h) corrosive materials, dangerous to human tissue or an aeroplane structure; and
- (i) other materials which are potentially hazardous in air transport, including magnetic substances.

(3) An Air Operator who intends to transport the material under subsection (2) by air may make an application to the Director of Civil Aviation for an exemption.

(4) An Air Operator shall give information on—

- (a) the name of the Air Operator;
- (b) registered address;
- (c) the chemical name and formula of the dangerous substance and its United Nations Classification number;
- (d) the quantity to be moved by air;
- (e) the purpose for which the material is to be used;
- (f) the airports between which it is proposed to move the substance;
- (g) how the material is to be protected;
- (h) the markings on the outside packaging;

- (i) safety precautions the applicant proposes to make, including security arrangements at each airport;
- (j) the air service(s) by which the material is to be conveyed; and
- (k) the frequency of the movements.

(5) The Director General may approve, impose additional conditions or refuse an application within four (4) weeks.

(6) The reasons for additional conditions or refusing the application shall be advised in writing to the applicant.

(7) Without prejudice to the generality of the type of conditions that may be imposed, such conditions may include—

- (a) restrictions on the quantity in a single consignment;
- (b) the frequency of movements;
- (c) the packing materials to be used;
- (d) the identifying marks to be used;
- (e) the air service by which the material is to be conveyed;
- (f) additional safety precautions in handling or protecting the material; and
- (g) inspection procedures to be followed.

(8) The Director General may make rules governing the carriage of dangerous goods by air as he sees fit.

(9) The Director General shall monitor compliance with the provisions of Annex 18 to the Chicago Convention and the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air, and may submit variations to the Technical Instructions where necessary.

(10) A person who contravenes subsection (1) commits an offence and shall, on conviction be liable to imprisonment for a period not exceeding twenty (20) years or a fine not exceeding one hundred thousand Emalangeni or both.

Validation.

46. The Director General may, in the discharge of certification and inspection responsibilities, validate the actions of the civil authority of another State in lieu of taking the specific action provided that—

- (a) in the case of actions on personnel licensing or airworthiness certificates, the other State is a signatory to the Chicago Convention and fulfills its obligations under the Chicago Convention with respect to the issuance and currency of these certificates;
- (b) in the case of actions applicable to Air Operators, the Director General exercises discretion and requiring supporting documents; or
- (c) the Director General ensures that, when validation is based on the actions of another civil aviation authority, there is no information to indicate that that State does not meet their obligations under the Chicago Convention regarding certification and on-going validation of their air operators.

PART VI

ACCIDENT INVESTIGATIONS AND PREVENTION

Accident investigation.

47. (1) The Director General—
- (a) shall establish an Accident Investigation Team, either by contract with another state or drawn from the Civil Aviation Authority with assistance from other parties as required; and
 - (b) may call on technical experts from any source to assist the accident investigation team establish in terms subparagraph (a);
 - (c) shall establish the objective of the accident or incident investigation as prevention, by establishing the facts, conditions and circumstances of the occurrence;
 - (d) shall promptly identify and notify the other States involved in the investigation;
 - (e) access and, if he considers it necessary, seize the aircraft or parts and any records relating to its crew, operation and maintenance; or
 - (f) may re-open an investigation at any time if he considers it necessary for any reason.
- (2) The Director General shall report the findings of the investigation to ICAO and furnish it with such information as it may require in so far as it has been discovered by the investigation.
- (3) The Director General shall take such measures as he considers necessary for the prevention of accidents, including the reporting of incidents, near misses and other dangerous occurrences, voluntary reporting of safety hazards, and the exchange of relevant information with other states to improve safety.
- (4) A state, operator or design and manufacture who is entitled to participate in an investigation may appoint an accredited representative to take part in the investigation.
- (5) The Director General, if considers it necessary—
- (a) may appoint an expert representative to an inquiry of another State if a Swazi citizen has suffered fatal injuries in the accident; and
 - (b) shall promptly arrange for all evidence relating to the accident to be preserved.
- (6) The Accident Investigation Team shall have power to summon and examine witness on oath and to call for the production, and grant inspection, of books, logs, certificates, licences and other documents.
- (7) The rules of the magistrates' courts governing procuring the attendance of witnesses, their examination, the production of books and documents shall apply in accident investigations.
- (8) The Chairman of the Accident Investigation Team shall have power to sign such documents as may be necessary for the inquiry in terms of the law governing enquiries.
- (9) The Accident Investigation Team shall be independent of the authority so as to participate in the investigation of accidents involving aircraft registered in Swaziland and

occurring in the territory of a foreign country, consistent with any agreement or other arrangement between Swaziland and the country in whose territory the accident occurred.

(10) The Authority shall ensure that any accident investigation is conducted in accordance with the provisions of this Act.

Investigation of accidents within military sites.

48. (1) Notwithstanding any other provision of this Act, the investigation of an accident of a military aircraft occurring within military sites in Swaziland or an accident of an aircraft of the armed forces of any foreign country occurring in Swaziland shall be the responsibility of the military.

(2) For the purposes of this subsection, the term “military sites” means the areas within Swaziland which are under the control of the military of Swaziland or the military of another country.

Findings of investigations.

49. (1) The findings of an investigation shall be recorded in writing and provided to the Minister, air service provider, airport service provider, air traffic and navigation services provider, Civil Aviation Committee or complainant and, if applicable, shall be accompanied by a compliance directive specifying the time scales within which such compliance shall be effected.

(2) Any party contemplated in subsection (3) may, within thirty (30) days after receipt of the findings of an investigation, lodge a written objection with the Authority.

(4) The Authority shall consider any objection lodged and may—

(a) confirm the original findings of an investigation and the subsequent directive by providing the objector with a written motivation; or

(b) amend the original findings or the directive.

(5) Any appeal against a decision taken by the Authority shall be presented in writing to the Minister within thirty (30) days from a decision of the Minister which shall be final and binding.

(6) Any person may, subject to subsection (3), request the Authority for any information received by it and the Authority shall comply with the request.

(7) The Authority may not disclose, transmit or make known to any person commercially sensitive information, unless—

(a) such information is required for the performance of that functions in terms of this Act or any other law;

(b) such information is required in terms of any law or as evidence in any court of law; or

(c) where relevant, written permission of any licensee or holder of an air operator certificate has been obtained.

Use of evidence.

50. A part of any report of the Director General relating to any accident or the investigation shall be admitted as evidence or used in any suit or action for damages arising out of any matter mentioned in such report.

Rules governing accident reporting.

51. The Director General shall make rules governing—

- (a) the notification and reporting of accidents and incidents involving aircraft;
- (b) any aspect of accident investigation including but not limited to collection of relevant information, access to and disclosure of records, recording of data, analysis of all relevant information, flight recorders, autopsy examinations and co-ordination with judicial authorities.

Right of inspection and access.

52. The Director General or his authorised representative shall have access to—

- (a) a civil aircraft without restriction wherever they are operated within Swaziland;
- (b) a civil aircraft registered in Swaziland wherever they are operated in the world for the purposes of ensuring that that aircraft is airworthy and being operated in accordance with this Act and regulations made under it;
- (c) an air carrier of Swaziland at any place and any time for the purpose of conducting tests or inspections to determine whether its operations are conducted in accordance with this Act and applicable regulations and directives;
- (d) approved maintenance organisations, repair stations and training schools, for the accomplishment of its duties; and
- (e) an aircraft engine, propeller, other aircraft part and an appliance used by an operator or maintainer of an aircraft as may be necessary to ensure that it is being maintained in a safe condition for the use to which it is, or intended to be, used.

Unsafe aircraft, engines, propellers and appliances.

53. (1) Where the Authority finds that an aircraft, aircraft engine, propeller or appliance, used or intended to be used by any operator in civil aviation, is not in a condition for safe operation, the Authority shall notify the operator.

(2) The aircraft, aircraft engine, propeller or appliance shall not be used in civil aviation or in such manner as to endanger civil aviation, unless it is found by the Authority to be in a condition for safe operation.

(3) A person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for period not exceeding five (5) years or a fine not exceeding two hundred and fifty thousand Emalangeni.

Prevention of operation of a flight.

54. The Authority shall prevent an operator or a flight crew from operating an aircraft in a situation where the—

- (a) aircraft may not be airworthy;
- (b) flight crew may not be qualified or is physically or mentally incapable of conducting the flight;
- (c) operation may cause imminent danger to persons in the aircraft or to any other persons or property on the ground;
- (d) detention of aircraft or flight crew is necessary to secure compliance with any of the provisions of this Act or the rules, standards instructions and procedures applicable to such aircraft; or
- (e) the provisions of this Act are being or likely to be contravened.

Accident prevention.

55. (1) The Director General shall take any corrective action, which, on the basis of the findings of the accident investigations and in the judgment of the Director General, tends to prevent similar accidents in the future.

(2) The Director General shall establish a safety management system, and may make regulations for the collection of any information that he believes improves safety.

DUTY OF OPERATORS AND AVIATION PERSONNEL

Duty of operators.

56. An operator shall inspect, maintain, overhaul and repair the equipment used in civil aviation and ensure that the operations conducted are in accordance with this Act and the regulations, directives of the Authority issued under this Act.

Duties of air operators.

57. A holder of an Air Operator Certificate shall ensure that the maintenance of aircraft and operations of that air operator is conducted in the public interest and in accordance with the requirements of this Act and the regulations and directives issued under this Act.

Duties of aircrew.

58. A holder of an aircrew licence shall observe and comply with the licence and the limitations of that licence, the requirements of this Act and the regulations, directives issued under this Act.

Prohibition from operation without a licence.

59. (1) A person shall not—

- (a) operate or fly an civil aircraft without a valid airworthiness certificate or permit in violation of the terms and conditions of any such certificate;
- (b) serve in any capacity as an aircrew member in connection with any civil aircraft, aircraft engine, propeller or appliance used or intended for use in

civil aviation without a licence authorising that person to serve in such capacity, or in violation of any term, condition or limitation of the licence, or in violation of any order, rule or regulation issued under this Act;

- (c) employ for service in connection with any civil aircraft used in civil aviation an aircrew member who does not have a licence authorising that person to serve in the capacity for which the person is employed;
- (d) operate as an air operator without an air operator certificate, or in violation of the terms of any such certificate; or
- (e) operate an aircraft in civil aviation in violation of any rule, regulation or certificate issued by the Director General under this Act;
- (f) hold a certificate issued to a school or approved maintenance organisation as provided in this Act in violation of any term, condition or limitation, order, rule or regulation made under this Act relating to the holder of such certificate,

(2) A person who contravenes this section commits an offence and shall, on conviction, be liable to a imprisonment of a term not exceeding ten (10) years or a fine not exceeding five hundred thousand Emalangeni or both.

Exemption.

60. (1) The Authority may, on terms the Authority prescribes as being in the public interest, exempt a foreign aircraft and aircrew members serving on the aircraft from section 59.

(2) Notwithstanding subsection (1), an exemption from observing air traffic regulations may not be granted.

COMPLAINTS TO AND INVESTIGATIONS BY THE DIRECTOR GENERAL

Filing of complaints.

61. (1) Any person may file with the Director General a complaint in writing with respect to anything done or omitted to be done by any person in contravention of any provision of this Act.

(2) If the person complained against does not satisfy the complaint and there appears any reasonable ground for investigating the complaint, the Director General shall investigate the matters set forth in the complaint.

(3) Where the Director General is of the opinion that a complaint does not state facts which warrant an investigation or action, such complaint may be dismissed without hearing.

Investigations.

62. (1) The Director General shall have power to institute an investigation at anytime, on his initiative, in any case and as to any matter or thing within the jurisdiction of the Director General concerning a complaint which is made to or before the Director General, or concerning a question may arise under any of the provisions of this Act.

(2) The Director General shall have the power to proceed with any investigation instituted on his initiative as though it had been made by complaint.

Re-inspection and re-examination.

63. The Authority may, from time to time, for any reason, re-inspect or re-examine any civil aircraft, aircraft engine, propeller, appliance, air operator, school or approved maintenance organisation, or any civil aircrew member holding a licence or certificate issued under this Act.

Actions of the Director General.

64. If, as a result of any such re-inspection or re-examination, or if, as a result of any other investigation made by the Authority, the Director General determines that safety in civil aviation or commercial air transport and the public interest so requires, the Director General may issue an order amending, modifying, suspending or revoking, in whole or in part, any airworthiness certificate, aircrew member licence, air operator certificate or certificate for any airport, school or approved maintenance organisation issued under this Act.

Notice to certificate holders and opportunity to answer.

65. Prior to amending, modifying, suspending, or revoking any certificate, the Director General shall advise the holder of a certificate as to any charges or reasons relied upon by the Director General for the proposed action and, except in cases of emergency, shall provide the holder of such a certificate an opportunity to answer any charges and be heard as to why such certificate should not be amended, modified, suspended or revoked.

Appeals.

66. Any person whose certificate is affected by such an order of the Director General under this section may appeal against the order of the Director General to the Minister.

Effectiveness of orders pending appeal.

67. The filing of an appeal with the Minister shall stay the effectiveness of the order of the Director General unless the Director advises the Minister that an emergency exists and safety in civil aviation requires the immediate effectiveness of the order, in which event the court may order that the order of the Director General shall remain effective pending the decision of the Minister.

Orders to compel compliance.

68. If the Director General finds, after notice and hearing, in any investigation instituted upon complaint or upon the initiative of the Director General, with respect to any matter within the jurisdiction of the Director General, that a person has failed to comply with any provision of this Act or any requirement established pursuant to the Act, the Director General shall, issue an appropriate order to compel that person to comply.

Effectiveness of orders.

69. Except in emergency situations, an order and rules of the Director General shall take effect within such reasonable times as the Director General may determine.

Suspension and modification of orders.

70. (1) The Director General shall have the power to suspend or modify orders upon such notice and in such manner, as the Director General shall find proper.

(2) The Director General may suspend or revoke, in whole or in part, any certificate or licence issued to a person in the event that such person violates any provision of this Act or any rules or any term or condition of that certificate or license issued under this Act.

PART VII
SECURITY

Security.

71. (1) A person shall not, while an aircraft is in flight—

(a) by force or threat of force and without lawful reason, seize control or exercise control of such aircraft; or

(b) assaults or willfully interferes with a member of the personnel of such aircraft in the performance of his duties.

(2) A person who contravenes this section commits an offence and, shall on conviction, be liable on conviction to imprisonment for a period not exceeding ten (10) years or a fine not exceeding five hundred thousand Emalangeni.

Possession of firearm or ammunition.

72. (1) A person shall not, while in any aircraft which is being used for the conveyance for reward of passengers or cargo, has in his possession a firearm or ammunition as defined in the Arms and Ammunition law or explosives as defined in the Explosives law, without the written permission of the pilot-in-command or the owner or a person acting under the authority of the owner of the aircraft.

(2) A person who contravenes this section commits an offence and liable on conviction, to imprisonment for a period not exceeding ten (10) years or a fine not exceeding three hundred thousand Emalangeni or both.

False allegation.

73. (1) A person shall not falsely allege that any other person is about to commit an offence in contravention with this section.

(2) A person who contravenes this section commits an offence and liable, on conviction, to a fine or imprisonment for a period not exceeding five (5) years, or both.

(3) For the purposes of subsection (1), “personnel” includes the pilot-in-command of, and any other person assigned to duty on an aircraft.

Endangering the safety of aircraft.

74. (1) A person shall not, intentionally—

(a) destroys an aircraft in service or damage such an aircraft as to render it incapable of flight or endanger its safety in flight; or

- (b) commit on board an aircraft in flight any act of violence which is likely to endanger the safety of the aircraft; or
- (c) attempt or conspire to commit, or aiding, abetting, counseling or procuring, or being part of the commission of such an offence.

(2) A person who contravenes this section commits an offence and liable on conviction to imprisonment for a period not exceeding twenty (20) years.

(3) In this section “Aircraft in service” means the period beginning with the pre-flight preparation of the aircraft and which terminates twenty-four (24) hours after the aircraft has landed, having completed the flight and anytime when the aircraft is in flight.

Endangering the safety of air navigation equipment.

75. (1) A person shall not, intentionally—

- (a) destroy or damage any property or equipment used for the provision of air navigation services, including any land, building or apparatus so used, whether on board an aircraft or elsewhere; or
- (b) communicate any information which is false, misleading or deceptive in a material particular, where the communication of the information endangers the safety of an aircraft in flight or is likely to endanger the safety of aircraft in flight.

(2) A person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a period not exceeding ten (10) years.

Prohibition of travel.

76. (1) Where a police officer or airport security officer has reasonable cause to suspect that a person is about to embark on an aircraft in Swaziland, or a person on board an aircraft, intends to commit, in relation to the aircraft, an offence under this Act, the police officer or airport security officer may prohibit him from travelling on board the aircraft, and for the purpose of enforcing that prohibition the officer may—

- (a) prevent the person from embarking on the aircraft, or may remove him from the aircraft; and
- (b) may arrest him without warrant and detain him for so long as may be necessary for that purpose.

(2) Any person who intentionally obstructs an officer acting in the exercise of a power conferred on him by subsection (1) or (2) above commits an offence and liable, on conviction, to a fine not exceeding two hundred Emalangeni or imprisonment for a term not exceeding two (2) years or both.

Security direction.

77. (1) The Authority may give a direction in writing to the operator of any one or more aircraft registered or operating in Swaziland, or to the manager of any aerodrome in Swaziland, requiring him—

- (a) not to cause or permit persons or property to go or be taken on board any aircraft to which the direction relates, or to come or be brought into proximity to any such aircraft, unless such searches of those persons or that property as

are specified in the direction have been carried out by duly authorised officers; or

- (b) not to cause or permit any such aircraft to fly unless such searches of the aircraft as are specified in the direction have been carried out by duly authorised officers.

(2) Any person who, without reasonable excuse, fails to comply with a direction given to him under this section commits an offence and liable, on conviction, to imprisonment for a term not exceeding two (2) years or a fine not exceeding two hundred thousand Emalangeni or both.

Questioning of persons at airport.

78. (1) A person, who in answer to a question which—

- (a) relates to any baggage, cargo or stores, whether belonging to him or to another, that is or are intended for carriage by a civil aircraft registered or operating in Swaziland; or
- (b) is put to him by an authorised person referred to in subsection (2); makes a statement intentionally which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular, commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand Emalangeni.

(2) The authorised person referred to in subsection (1) is—

- (a) the manager of an aerodrome in Swaziland;
- (b) the operator of one or more aircraft registered or operating in Swaziland;
- (c) any person permitted to have access to the restricted zone of an aerodrome and who has control in that restricted zone over the baggage, cargo or stores to which the question relates;
- (d) any police officer or Airport Security Officer;
- (e) any employee or agent of such a person in subparagraph (a), (b) or (c).

Unauthorised presence in restricted zone.

79. (1) A person shall not enter, with or without a vehicle, on to any part of a restricted zone at an aerodrome or an air navigation installation which does not form part of an aerodrome, except with the permission of the Manager of the aerodrome, the Authority or a person acting on behalf of the Manager or Authority.

(2) A person shall not remain on any part of a restricted zone after being requested to leave by a Police Officer, the Manager of the aerodrome, the Authority or a person acting on behalf of the Manager or Authority.

(3) Subsection (1) shall apply if it is proved that at the material time, notices stating that the area is a restricted zone is posted so as to be readily seen and read by persons entering the restricted zone.

(4) A Police Officer, the Airport Manager, the Authority or a person acting on behalf of the Manager or Authority may use reasonable force to remove a person who fails to comply with a request under subsection (1).

(5) A person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment of a term not exceeding two (2) years and a fine not exceeding twenty thousand Emalangeni.

PART VIII FINANCIAL PROVISIONS

General financial duties.

80. (1) The Authority shall conduct its affairs in a manner that secures that its revenue is not less than sufficient to meet its expenses.

(2) The Director General shall ensure that the expenses of the Authority do not exceed the budget allocated for the financial year.

Funds of the Authority.

81. (1) The funds of the Authority consist of—

- (a) fees, rents, dues and charges levied by the Authority for services rendered or facilities provided or proceeds obtained from sale of property;
- (b) any other money received by the Authority for the purposes of carrying out its activities;
- (c) budget allocated by the Government as required;
- (d) Airport Departure Tax; and
- (e) fines and penalties, which may be imposed by the Authority.

(2) The Board may, after consultation with the Minister, prescribe, through aeronautical information publication and notice in the *Gazette* a schedule of fees and charges which are to be paid to the Authority in respect of services rendered or facilities provided, specifying the amount of the charge for each case of the service or facilities provided and the manner in which, the time at which and the penalties for late payment, including interest payment on overdue amounts.

(3) A penalty prescribed under this section shall not exceed a penalty equivalent to one and one-half per cent (1.5%) of the unpaid amount of the fee for each month or part of a month during which the fee is unpaid, calculated from the date on which the fee is due and payable, and compounded.

Remittance.

82. The annual budgetary allocation by the Government shall be remitted to the Authority in an effective and timely manner.

Bank account.

83. (1) The funds received by the Authority shall be deposited in a bank account, which shall be opened for this purpose in the name of the Authority and shall be expended in accordance with the approved annual work programme and budget of the Authority.

(2) Any surplus at the end of each fiscal year shall be transferred to a special reserve fund maintained by the Authority.

Borrowing powers.

84. Subject to the approval of the Minister, the Authority shall have power to borrow such sums as it may require for performing its functions.

Accounts.

85. The Authority shall—

- (a) maintain proper accounts and other relevant records of its expenditures and revenues;
- (b) prepare an annual statement of expenditures and revenues in such form as may be prescribed by Minister in consultation with the Auditor-General, showing the state of affairs and the profit and loss of the Authority; and
- (c) as soon as the accounts have been audited, submit a copy of any reports made by the auditors on the accounts and the statement to the Minister.

Budget.

86. (1) The Director General shall prepare the budget of the Authority for each year and, after approval by the Board, submit it to the Minister.

(2) The Authority shall prepare and submit quarterly financial reports to the Minister after approval by the Board.

Audit.

87. (1) The books of account and the financial affairs of the Authority shall be audited annually by auditors appointed by the Board.

(2) The auditors shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.

(3) The Board shall cause to be prepared within three (3) months of the end of each financial year its annual audited accounts for the approval of the Board and submission to the Minister.

Annual report.

88. (1) The Director General shall prepare once every year in such form and at such time as may be prescribed, an annual report giving a summary of its activities during the previous year and he shall, not later than three (3) months after the close of the financial year of the Authority, after approval by the Board, submit the annual report to the Minister.

(2) The annual report shall contain an overview of the operations of the Authority, including—

- (a) a review of progress made with respect to commercial diversification;
- (b) a report on civil aviation safety, detailing each reported incident of loss of life or significant loss of property, the causes and the preventative measures which have been introduced;
- (c) a statistical report regarding the flow of cargo and persons through airports and operational efficiencies achieved;

- (d) the number of air service licences, certificates, registration, validations made during the year and the operational efficiency achieved during the year;
- (e) the number of air traffic and navigation licences issued;
- (f) number of aircraft movements handled for commercial, private, non-scheduled and military purposes at each airport;
- (g) an assessment whether performance targets set in the business plan have been achieved;
- (h) fees and charges collected;
- (i) the audited financial statements; and
- (j) additional expenditure or revenue forgone resulting from compliance with a directive of the Minister.

(3) The Authority shall furnish to the Minister at such time and in such form and manner as may be prescribed, or as the Minister may direct, such returns and statements and such particulars in regard to any proposed or existing programme for the promotion and development of the air transport services and civil aviation infrastructure, including progress reports on the restructuring of airports, air traffic and navigation services.

PART IX MISCELLANEOUS

Trespass, nuisance and responsibility for damages.

89. (1) An action shall not lie in respect of trespass or in respect of nuisance, by reason of the flight of an aircraft over any property at a height, which having regard to wind, weather and the circumstances of the case is reasonable, or the ordinary incidents of such flight, provided that the provisions of this Act and the Chicago Convention and of the Transit Agreement are duly complied with.

(2) Where material damage or loss is incurred by an aircraft in flight, taking off or landing, or by a person in such aircraft, to a person or property, damages may be recovered from the owner of the aircraft in respect of such damage or loss, without proof of negligence or intention or other cause of action as though the damage or loss is caused by his willful act, neglect or default.

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

(4) Where any damages recovered from or paid by the owner of an aircraft under this section arose from the damage or loss solely by the wrongful or negligent act or omission of any person other than the owner or a person in his employment, the owner shall, subject to the provision of subsection (5)(b) and any other law, be entitled to recover from the person the amount of such damage.

War and emergencies.

90. (1) The Minister may, if it appears to him necessary in the interests of defence, public safety or public order—

- (a) by notice in the *Gazette* declare Swaziland or any portion of it to be a restricted area for the purposes of this section; and
- (b) by notice in the *Gazette*, issue orders and instructions in respect of any restricted area or part—
 - (i) regulating, restricting or prohibiting the navigation of any aircraft;
 - (ii) regulating, restricting or prohibiting the use, erection, building, maintenance or establishment of any aerodrome, flying school or landing ground; and
 - (iii) appointing a person to carry out and effect any of such orders and instructions.

(2) The person appointed under subsection (1)(b)(iii) shall take steps which may be reasonably required to secure compliance with such orders and instructions.

(3) A claim for damages or compensation shall not lie against the Government or the person appointed in terms of subsection (1)(b)(iii) arising out of any steps taken in good faith by him under subsection (2).

(4) A person who fails to comply with an order or instruction made or issued under or pursuant to this section, or who obstructs a person charged with the duty of carrying out and giving effect to the order or instruction, commits an offence and shall, on conviction, be liable on conviction to imprisonment not exceeding one (1) year or a fine not exceeding one hundred thousand Emalangeni or both.

Requisitioning for search and rescue.

91. (1) The Authority may, at any time, requisition any civil aircraft and call out any holder of a flight crew licence issued in terms of this Act, for air search and rescue operations, subject to the payment of compensation at such rate as may be prescribed.

(2) If the air search and rescue operations are undertaken by the Authority in connection with an occurrence caused by the negligent or other unlawful act or omission of any person, the Authority may recover from such person the whole or any portion of the expenses incurred by the Authority in connexion with such operations according as it may determine.

(3) A person who, without lawful reason, refuses or fails to comply with any order or instruction made or given by virtue of the provisions of subsection (1), commits an offence and shall, on conviction, be liable on conviction to imprisonment not exceeding one (1) year or a fine not exceeding one hundred thousand Emalangeni.

Jurisdiction.

92. An offence under this Act and an offence committed on an aircraft registered in Swaziland shall, for the purposes in relation to jurisdiction of a court to try the offence, be deemed to have been committed in any place where the accused happens to be, provided that if such an offence is committed in Swaziland, it may be tried by any court having jurisdiction where it was committed.

Presumption.

93. Where in a prosecution for an offence it is proved that the offence took place within the demarcated boundaries of an aerodrome it shall be presumed, unless the contrary is proved,

that the act or omission in question took place within the defined area constituting the aerodrome.

Infringement of patents.

94. (1) Where it is alleged by a person interested that a foreign aircraft, other than an aircraft to which section 95 applies, making a passage through or over Swaziland infringes in itself or in any part of it any invention, design or model which is entitled to protection in Swaziland, the High Court may, pending action to be brought, order the detention of such aircraft until the owner deposits or secures, in respect of the alleged infringement, a sum determined in accordance with the provisions of subsection (3)(a).

(2) Upon such sum being deposited or secured the aircraft shall not, during the continuance or in the course of the passage, be subject to further detention in respect of the same cause of action.

(3) The deposited sum shall be such sum as may be agreed between the parties interested, or shall, in default of agreement, be fixed by the court, and payment shall be made or secured in such manner as may be agreed upon between them, or shall in default of agreement, be directed by the court.

(4) In giving judgment in the action so to be brought, the court shall grant an order as to the disposal of the deposited sum.

(5) For the purposes of this section, the expression "owner" means actual owner of an aircraft, and includes any person claiming through or under him, and the expression "passage" includes all landings and stoppages in the course, or for the purposes of a flight.

Exemption of certain aircraft and parts from seizure on patent claims.

95. (1) A lawful entry into Swaziland, or a lawful transit across it, with or without landings, of an aircraft to which this section applies, shall not entail any seizure or detention of the aircraft, or proceedings being brought against the owner or operator, or other interference therewith, by or on behalf of a person in Swaziland, 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) The importation into, and storage in Swaziland of spare parts and spare equipment for an aircraft to which this section applies in terms of subsection (3), and the use and installation in the repair of such aircraft shall not entail any seizure or detention of the aircraft or of the spare parts or spare equipment, or any proceedings being brought against the owner or operator of the aircraft or the owner of the spare parts or spare equipment, or any other interference with the aircraft by or on behalf of any person in Swaziland 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) shall not apply in relation to any spare parts or spare equipment which are sold or distributed in Swaziland or are exported from it for sale or distribution.

(4) This section applies to an aircraft, other than an aircraft used in military, customs or police services, registered in any country or territory in respect of which there is for the time being in force a declaration made by the Minister by notice in the *Gazette*, with a view to the fulfillment of the provisions of the Chicago Convention and of the Transit Agreement, that

the benefits of those provisions apply to that country or territory or to such other aircraft as the Minister may by notice specify.

(5) The provisions of section 94 shall not apply to or in relation to an aircraft to which this section applies.

Detention of aircraft.

96. (1) If the owner, pilot-in-command or person in charge of an aircraft commits an offence under this Act from or in respect of that aircraft or if reasonable suspicion exists that such an offence has been committed or attempted or is about to be committed or attempted from or in respect of an aircraft by the owner, pilot-in-command or person in charge, any member of the Swaziland police force or Airport Security Officer may, pending the trial of the charge, detain the aircraft in question.

(2) If recognisances are entered into or security deposited to the satisfaction of the Authority having power to demand and receive such recognisances or security, the Authority may, if satisfied that the ends of justice will not thereby be prejudiced, order the release of the aircraft from further detention.

(3) A person who, knowing that the aircraft is being detained in terms of subsection (1), removes or causes it to be removed commits an offence.

(4) No customs officer authorised to grant clearance to an aircraft shall grant clearance to an aircraft while it is detained in terms of this section.

Indemnification of the Government and certain officers.

97. Notwithstanding any legal provision to the contrary, the Government and its officers and employees acting in the performance of their duty shall not be liable for—

- (a) loss or damage caused by the death of or injury to any person while conveyed in an aircraft owned, operated or chartered by the Government or while entering or mounting or being in such aircraft for the purpose of being conveyed in it or while being in or alighting from it after having been conveyed in it, if that person was so conveyed or to be conveyed otherwise than in the performance of his duty as an officer or employee of the Government; or
- (b) loss of, or damage to, a goods conveyed in such aircraft otherwise than in the interests of the Government.

Establishment and maintenance of aerodromes.

98. The Authority may out of moneys appropriated by Parliament for the purpose—

- (a) establish and maintain aerodromes;
- (b) provide and maintain roads and approaches, and apparatus and equipment therefore, including radio and electronic apparatus and equipment;
- (c) construct and maintain drainage works for the control and disposal of water that would otherwise gather thereon; and
- (d) acquire land and interests in and rights over land for any purpose contemplated in paragraph (a), (b) or (c).

Acquisition of land.

99. The Authority may, out of moneys appropriated by Parliament for the purpose—

- (a) acquire land and interests in and rights to and over land adjoining or adjacent to any aerodrome not belonging to the Government or Authority, in respect of which a licence under the regulations has been or is to be issued for the purpose of ensuring that proper effect may be given to any regulation made under this Act; or
- (b) acquire land and interests in and rights to and over land for the purpose of the erection and maintenance of warning lights and other aids to safety in air navigation, including pipe lines or power lines or the like, whether underground or overhead, required in connection with such lights or other aids, which are deemed necessary in connection with any aerodrome not belonging to the Government or Authority, in respect of which a licence under the regulations has been, or is being, issued.

Access to land.

100. (1) A person authorised in writing by the Director General may enter any land or structure, after notice to the occupier for the purpose of carrying out any such examination or survey as may be necessary to determine the suitability for any of the purposes under this Act.

(2) Any person who hinders or obstructs any person in the exercise of his powers or the performance of his duties under subsection (1) commits an offence and shall, on conviction, be liable to imprisonment not exceeding one (1) year or a fine not exceeding one hundred thousand Emalangeni.

PART X

TRANSITIONAL PROVISIONS, REPEAL AND SCHEDULES

Officers and employees.

101. The terms and conditions of service of an officer or employee holding office under the Civil Aviation Directorate shall, immediately upon commencement of this Act, be determined by the Minister in terms of the law applicable to public servants after consultation with the relevant public service representative body.

Vesting of assets.

102. The assets of the Authority which shall vest in the Authority at the commencement of this Act are—

- (a) the new international airport under construction at Sikhuphe;
- (b) the existing Government owned airstrip at Nhlango;
- (c) Government owned aeronautical aviation equipment in Swaziland;
- (d) the existing International Airport at Matsapha, until such time as Sikhuphe is formally opened and shall revert to the Government with such fixed and mobile assets as are no longer needed by the Authority and are agreed between the Authority and the Government.

Regulations, rules and licences made under the Aviation Act, 1968.

103. (1) Regulations or rules made under the Aviation Act, 1968, and in force immediately before the coming into force of this Act shall continue in force until replaced or otherwise dealt with under this Act.

(2) A licence, permit, lease granted or issued under the Aviation Act, 1968, and subsisting immediately before the commencement of this Act shall continue under the laws applicable immediately before the coming into force of this Act.

Powers of Minister to make regulations.

104. The Minister may make regulations to give effect to this Act, in particular, carrying out of, and giving effect to, the provisions of the Convention, the Transit Agreement and any other international agreement on civil aviation as may be declared in terms of this Act.

Repeal.

105. The Aviation Act, No. 31 of 1968, is repealed.

FIRST SCHEDULE
(Under Section 46)

CONVENTION ON INTERNATIONAL CIVIL AVIATION PREAMBLE

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

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

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

Have accordingly concluded this Convention to that end.

CHAPTER I

PART I - AIR NAVIGATION

GENERAL PRINCIPLES AND APPLICATION OF THE CONVENTION

Article 1

Sovereignty

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

Article 2

Territory

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

Article 3

Civil and state aircraft

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

Article 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

Scheduled air services

No scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorisation of that State, and in accordance with the terms of such permission or authorisation.

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

Article 11

Applicability of air regulations

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

Article 12

Rules of the air

Each contracting State undertakes to adopt measures to insure that every aircraft flying over or manoeuvring within its territory and that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the rules and regulations relating to the flight and manoeuvre of aircraft there in force. Each contracting State undertakes to keep its own regulations in these respects uniform, to the greatest possible extent, with those established from time to time under this Convention. Over the high seas, the rules in force shall be those established under this Convention. Each contracting State undertakes to insure the prosecution of all persons violating the regulations applicable.

Article 13

Entry and clearance regulations

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

Article 14

Prevention of spread of disease

Each contracting State agrees to take effective measures to prevent the spread by means of air navigation of cholera, typhus (epidemic), smallpox, yellow fever, plague, and such other

communicable diseases as the contracting 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.

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 laws and regulations.

Article 20

Display of marks

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

Article 21

Report of registrations

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

CHAPTER IV

MEASURES TO FACILITATE AIR NAVIGATION

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 the

Convention. Nothing in this Convention shall be construed as preventing the establishment of customs-free airports.

Article 24

Customs duty

(a) Aircraft on a flight to, from, or across the territory of another contracting State shall be admitted temporarily free of duty, subject to the customs regulations of the State. Fuel, lubricating oils, spare parts, regular equipment and aircraft stores on board an aircraft of a contracting State, on arrival in the territory of another contracting State and retained on board on leaving the territory of that State shall be exempt from customs duty, inspection fees or similar national or local duties and charges. This exemption shall not apply to any quantities or articles unloaded, except in accordance with the customs regulations of the State, which may require that they shall be kept under customs supervision.

(b) Spare parts and equipment imported into the territory of a contracting State for incorporation in or use on an aircraft of another contracting State engaged in international air navigation shall be admitted free of customs duty, subject to compliance with the regulations of the State concerned, which may provide that the articles shall be kept under customs supervision and control.

Article 25

Aircraft in distress

Each contracting State undertakes to provide such measures of assistance to aircraft in distress in its territory as it may find practicable, and to permit, subject to control by its own authorities, the owners of the aircraft or authorities of the State in which the aircraft is registered to provide such measures of assistance as may be necessitated by the circumstances. Each contracting State, when undertaking search for missing aircraft, will collaborate in co-ordinating 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 authorised entry of aircraft of a contracting State into the territory of another contracting State or authorised 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 patent 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 recognise 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 licences for each member of the crew;
- (d) its journey log book;
- (e) if it is equipped with radio apparatus, the aircraft radio station licence;
- (f) if it carries passengers, a list of their names and places of embarkation and destination;
- (g) if it carries cargo, a manifest and detailed declarations of the cargo.

Article 30

Aircraft radio equipment

(a) Aircraft of each contracting State may, in or over the territory of other contracting States, carry radio transmitting apparatus only if a licence to install and operate such apparatus has been issued by the appropriate authorities of the State in which the aircraft is registered. The use of radio transmitting apparatus in the territory of the contracting State whose territory is flown over shall be in accordance with the regulations prescribed by that State.

(b) Radio transmitting apparatus may be used only by members of the flight crew who are provided with a special licence for the purpose, issued by the appropriate authorities of the State in which the aircraft is registered.

Article 31

Certificates of airworthiness

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

Article 32

Licences of personnel

(a) The pilot of every aircraft and the other members of the operating crew of every aircraft engaged in international navigation shall be provided with certificates of competency and licences issued or rendered valid by the State in which the aircraft is registered.

(b) Each contracting State reserves the right to refuse to recognise, for the purpose of flight above its own territory, certificates of competency and licences granted to any of its nationals by another contracting State.

Article 33

Recognition of certificates and licences

Certificates of airworthiness and certificates of competency and licences issued or rendered valid by the contracting State, in which the aircraft is registered, shall be recognised as valid by the other contracting States, provided that the requirements under which such certificates or licences were issued or rendered valid are equal to or above the minimum standards which may be established from time to time pursuant to this Convention.

Article 34

Journey log books

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

Article 35

Cargo restrictions

(a) No munitions of war or implements of war may be carried in or above the territory of a State in aircraft engaged in international navigation, except by permission of such State. Each State shall determine by regulations what constitutes munitions of war or implements of war for the purposes of this Article, giving due consideration, for the purposes of uniformity, to such recommendations as the International Civil Aviation Organization may, from time to time, make.

(b) Each contracting State reserves the right, for reasons of public order and safety, to regulate or prohibit the carriage in or above its territory of articles other than those enumerated in paragraph (a):

Provided that no distinction is made in this respect between its national aircraft engaged in international navigation and the aircraft of the other States so engaged; and provided further that no restriction shall be imposed which may interfere with the carriage and use on aircraft of apparatus necessary for the operation or navigation of the aircraft or the safety of the personnel or passengers.

Article 36

Photographic apparatus

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

CHAPTER VI

INTERNATIONAL STANDARDS AND RECOMMENDED PRACTICES

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 organisation in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation.

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

(a) communications systems and air navigation aids, including ground marking;

(b) characteristics of airports and landing areas;

- (c) rules of the air and air traffic control practices;
- (d) licensing of operating and mechanical personnel;
- (e) airworthiness of aircraft;
- (f) registration and identification of aircraft;
- (g) collection and exchange of meteorological information;
- (h) log books;
- (i) aeronautical maps and charts;
- (j) customs and immigration procedures;
- (k) aircraft in distress and investigation of accidents,

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

Article 38

Departures from international standards and procedures

Any State which finds it impracticable to comply in all respects with any such international standard or procedure, or to bring its own regulations or practices into full accord with any international standard or procedure after amendment of the latter, or which deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, shall give immediate notification to the International Civil Aviation Organization of the differences between its own practice and that established by the international standard. In the case of amendments to international standards, any State which does not make the appropriate amendments to its own regulations or practices shall give notice to the Council within sixty (60) days of the adoption of the amendment to the international standard, or indicate the action which it proposes to take. In any such case, the Council shall make immediate notification to all other states of the difference which exists between one or more features of an international standard and the corresponding national practice of that State.

Article 39

Endorsement of certificates and licences

(a) Any aircraft or part thereof with respect to which there exists an international standard of airworthiness or performance, and which failed in any respect to satisfy that standard at the time of its certification, shall have endorsed on or attached to its airworthiness certificate a complete enumeration of the details in respect of which it so failed.

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

Article 40

Validity of endorsed certificates and licences

No aircraft or personnel having certificates or licences so endorsed shall participate in international navigation, except with the permission of the State or States whose territory is

entered. The registration or use of any such aircraft, or of any certificated aircraft part, in any State other than that in which it was originally certificated shall be at the discretion of the State into which the aircraft or part is imported.

Article 41

Recognition of existing standards of airworthiness

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

Article 42

Recognition of existing standards of competency of personnel

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

PART II

THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

CHAPTER VII

THE ORGANIZATION

Article 43

Name and composition

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

Article 44

Objectives

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

- (a) insure the safe and orderly growth of international civil aviation throughout the world;
- (b) encourage the arts of aircraft design and operation for peaceful purposes;
- (c) encourage the development of airways, airports, and air navigation facilities for international civil aviation;
- (d) meet the needs of the peoples of the world for safe, regular, efficient and economical air transport;

- (e) prevent economic waste caused by unreasonable competition;
- (f) insure that the rights of contracting States are fully respected and that every contracting State has a fair opportunity to operate international airlines;
- (g) avoid discrimination between contracting States;
- (h) promote safety of flight in international air navigation;
- (i) promote generally the development of all aspects of international civil aeronautics.

Article 45

Permanent seat

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

Article 46

First meeting of Assembly

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

Article 47

Legal capacity

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

CHAPTER VIII

THE ASSEMBLY

Article 48

Meetings of Assembly and voting

(a) The Assembly shall meet not less than once in three (3) years and shall be convened by the Council at a suitable time and place. Extraordinary meetings of the Assembly may be held at any time upon the call of the Council or at the request of any ten contracting States addressed to the Secretary-General.

(b) All contracting States shall have an equal right to be represented at the meetings of the Assembly and each contracting State shall be entitled to vote. Delegates

representing contracting States may be assisted by technical advisers who may participate in the meetings but shall have no vote.

(c) A majority of the contracting States is required to constitute a quorum for the meetings of the Assembly. Unless otherwise provided in this Convention, decisions of the Assembly shall be taken by a majority of the votes cast.

Article 49

Powers and duties of Assembly

The powers and duties of the Assembly shall be to—

- (a) elect at each meeting its President and other officers;
- (b) elect the contracting States to be represented on the Council, in accordance with the provisions of Chapter IX;
- (c) examine and take appropriate action on the reports of the Council and decide on any matter referred to it by the Council;
- (d) determine its own rules of procedure and establish such subsidiary commissions as it may consider to be necessary or desirable;
- (e) vote annual budgets and determine the financial arrangements of the Organization, in accordance with the provisions of Chapter XII;
- (f) review expenditures and approve the accounts of the Organization;
- (g) refer, at its discretion, to the Council, to subsidiary commissions, or to any other body any matter within its sphere of action;
- (h) delegate to the Council the powers and authority necessary or desirable for the discharge of the duties of the Organization and revoke or modify the delegations of authority at any time;
- (i) carry out the appropriate provisions of Chapter XIII;
- (j) consider proposals for the modification or amendment of the provisions of this Convention and, if it approves of the proposals, recommend them to the contracting States in accordance with the provisions of Chapter XXI;
- (k) deal with any matter within the sphere of action of the Organization not specifically assigned to the Council.

CHAPTER IX

THE COUNCIL

Article 50

Composition and election of Council

(a) The Council shall be a permanent body responsible to the Assembly. It shall be composed of twenty-one 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.

(b) In electing the members of the Council, the Assembly shall give adequate representation to—

- (1) the States of chief importance in air transport;
- (2) the States not otherwise included which make the largest contribution to the provision of facilities for international civil air navigation; and
- (3) the States not otherwise included whose designation will insure that all the major geographic areas of the world are represented on the Council. Any vacancy on the Council shall be filled by the Assembly as soon as possible; any contracting State so elected to the Council shall hold office for the unexpired portion of its predecessor's term of office.

(c) No representative of a contracting State on the Council shall be actively associated with the operation of an international air service or financially interested in such a service.

Article 51

President of Council

The Council shall elect its President for a term of three years. He may be re-elected. He shall have no vote. The Council shall elect from among its members one or more Vice-Presidents who shall retain their right to vote when serving as acting President. The President need not be selected from among the representatives of the members of the Council but, if a representative is elected, his seat shall be deemed vacant and it shall be filled by the State which he represented. The duties of the President shall be to—

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

Article 52

Voting in Council

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

Article 53

Participation without a vote

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

Article 54

Mandatory functions of Council

The Council shall—

- (a) submit annual reports to the Assembly;
- (b) carry out the directions of the Assembly and discharge the duties and obligations which are laid on it by this Convention;
- (c) determine its organisation and rules of procedure;
- (d) appoint and define the duties of an Air Transport Committee, which shall be chosen from among the representatives of the members of the Council, and which shall be responsible to it;
- (e) establish an Air Navigation Commission, in accordance with the provisions of Chapter X;
- (f) administer the finances of the Organization in accordance with the provisions of Chapters XII and XV;
- (g) determine the emoluments of the President of the Council;
- (h) appoint a chief executive officer who shall be called the Secretary General, and make provision for the appointment of such other personnel as may be necessary, in accordance with the provisions of Chapter XI;
- (i) request, collect, examine and publish information relating to the advancement of air navigation and the operation of international air services, including information about the costs of operation and particulars of subsidies paid to airlines from public funds;
- (j) report to contracting States any infraction of this Convention, as well as any failure to carry out recommendations or determinations of the Council;
- (k) report to the Assembly any infraction of this Convention where a contracting State has failed to take appropriate action within a reasonable time after notice of the infraction;
- (l) adopt, in accordance with the provisions of Chapter VI of this Convention, international standards and recommended practices; for convenience, designate them as Annexes to this Convention; and notify all contracting States of the action taken;
- (m) consider recommendations of the Air Navigation Commission for amendment of the Annexes and take action in accordance with the provisions of Chapter XX;
- (n) consider any matter relating to the Convention which any contracting State refers to it.

Article 55

Permissive function of Council

The Council may—

- (a) where appropriate and as experience may show to be desirable create subordinate air transport commissions on a regional or other basis and define groups of states or airlines with or through which it may deal to facilitate the carrying out of the aims of this Convention;

- (b) delegate to the Air Navigation Commission duties additional to those set forth in the Convention and revoke or modify such delegations of authority at any time;
- (c) conduct research into all aspects of air transport and air navigation which are of international importance, communicate the results of its research to the contracting States, and facilitate the exchange of information between contracting States on air transport and air navigation matters;
- (d) study any matters affecting the organisation 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 twelve members appointed by the Council from among persons nominated by contracting States. These persons shall have suitable qualifications and experience in the science and practice of aeronautics. The Council shall request all contracting States to submit nominations. The President of the Air Navigation Commission shall be appointed by the Council.

Article 57

Duties of Commission

The Air Navigation Commission shall—

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

CHAPTER XI

PERSONNEL

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 organisations. 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.

Article 62

Suspension of voting power

The Assembly may suspend 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 organisation 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

Improvements 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 utilisation 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 amortisation 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 amortisation 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 ORGANISATIONS AND POOLED SERVICES

Article 77

Joint operating organisations permitted

Nothing in this Convention shall prevent two or more contracting States from constituting joint air transport operating organisations or international operating agencies and from pooling their air services on any routes or in any regions, but such organisations 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 organisations to operate air services on any routes or in any regions.

Article 79

Participation in operating organisations

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

PART IV - FINAL PROVISIONS

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.

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 (60) days of receipt of notification of the decision of the Council.

Article 85

Arbitration procedure

If any contracting State party to a dispute in which the decision of the Council is under appeal has not accepted the Statute of the Permanent Court of International Justice and the contracting States parties to the dispute cannot agree on the choice of the arbitral tribunal, each of the contracting States parties to the dispute shall name a single arbitrator who shall name an umpire. If either contracting State party to the dispute fails to name an arbitrator within a period of three (3) months from the date of the appeal, an arbitrator shall be named

on behalf of that State by the President of the Council from a list of qualified and available persons maintained by the Council. If, within thirty days, the arbitrators cannot agree on an umpire, the President of the Council shall designate an umpire from the list previously referred to. The arbitrators and the umpire shall then jointly constitute an arbitral tribunal. Any arbitral tribunal established under this or the preceding Article shall settle its own procedure and give its decisions by majority vote, provided that the Council may determine procedural questions in the event of any delay which in the opinion of the Council is excessive.

Article 86

Appeals

Unless the Council decides otherwise, any decision by the Council on whether an international airline is operating in conformity with the provisions of this Convention shall remain in effect unless reversed on appeal. On any other matter, decisions of the Council shall, if appealed from, be suspended until the appeal is decided. The decisions of the Permanent Court of International Justice and of an arbitral tribunal shall be final and binding.

Article 87

Penalty for non-conformity by airline

Each contracting State undertakes not to allow the operation of an airline of a contracting State through the airspace above its territory if the Council has decided that the airline concerned is not conforming to a final decision rendered in accordance with the previous Article.

Article 88

Penalty for non-conformity by State

The Assembly shall suspend the voting power in the Assembly and in the Council of any contracting State that is found in default under the provisions of this Chapter.

CHAPTER XIX

WAR

Article 89

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 (1), shall require the vote of two-thirds of the Council at a meeting called for that purpose and shall then be submitted by the Council to each contracting State. Any such Annex or any amendment of an Annex shall become effective within three months after its submission to the contracting States or at the end of such longer period of time as the Council may prescribe, unless in the meantime a majority of the contracting States register their disapproval with the Council.

(b) The Council shall immediately notify all contracting States of the coming into force of any Annex or amendment thereto.

CHAPTER XXI

RATIFICATION, 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 (26) 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 organisation 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 94

Amendment of Convention

- (a) Any proposed amendment to this Convention must be approved by a two-thirds vote of the Assembly and shall then come into force in respect of States which have ratified such amendment when ratified by the number of contracting States specified by the Assembly. The number so specified shall not be less than two-thirds of the total number of contracting States.
- (b) If in its opinion the amendment is of such a nature as to justify this course, the Assembly in its resolution recommending adoption may provide that any State which has not ratified within a specified period after the amendment has come into force shall thereupon cease to be a member of the Organization and a party to the Convention.

Article 95

Denunciation of Convention

- (a) Any contracting State may give notice of denunciation of this Convention three years after its coming into effect by notification addressed to the Government of the United States of America, which shall at once inform each of the contracting States.
- (b) Denunciation shall take effect one (1) 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 authorised, sign this Convention on behalf of the respective governments on the dates appearing opposite their signatures.

DONE at Chicago the seventh day of December, 1944, in the English language. A text drawn up in the English, French, and Spanish languages, each of which shall be of equal authenticity, shall be opened for signature at Washington, D.C. Both texts shall be deposited in the archives of the Government of the United States of America, and certified copies shall be transmitted by that Government to the governments of all the States which may sign or adhere to this Convention. *Note.*—Names of signatories not printed.

SECOND SCHEDULE

(Under Section 95)

INTERNATIONAL AIR SERVICES TRANSIT AGREEMENT

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

Article I

Section 1

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

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

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

Section 2

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

Section 3

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

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

Section 4

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

(1) Designate the route to be followed within its territory by any international air service and the airports which any such service may use;

(2) Impose or permit to be imposed on any such service just and reasonable charges for the use of such airports and other facilities; these charges shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services:

Provided that, upon representation by an interested contracting State, the charges imposed for the use of airports and other facilities shall be subject to review by the Council of the International Civil Aviation Organization established under the above-mentioned Convention, which shall report and make recommendations thereon for the consideration of the State or States concerned.

Section 5

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

ARTICLE II

Section 1

A contracting State, which deems that action by another contracting State under this Agreement is causing injustice or hardship to it, may request the Council to examine the situation. The Council shall thereupon enquire into the matter, and shall call the States concerned into consultation. Should such consultation fail to resolve the difficulty, the Council may make appropriate findings and recommendations to the contracting States concerned. If thereafter a contracting State concerned shall in the opinion of the Council unreasonably fail to take suitable corrective action, the Council may recommend to the Assembly of the above-mentioned Organization that such contracting State be suspended from its rights and privileges under this Agreement until such action has been taken. The Assembly by a two-thirds vote may so suspend such contracting State for such period of time as it may deem proper or until the Council shall find that corrective action has been taken by such State.

Section 2

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

Article III

This Agreement shall remain in force as long as the above-mentioned Convention: Provided, however, that any contracting State, a party to the present Agreement, may denounce it

on one year's notice given by it to the Government of the United States of America, which shall at once inform all other contracting States of such notice of withdrawal.

Article IV

Pending the coming into force of the above-mentioned Convention, all references to it herein, other than those contained in Article II, Section II and Article V, shall be deemed to be references to the Interim Agreement on International Civil Aviation drawn up at Chicago on December 7, 1944; and references to the International Civil Aviation Organization, the Assembly, and the Council shall be deemed to be references to the Provisional International Civil Aviation Organization, the Interim Assembly, and Interim Council, respectively.

Article V

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

Article VI

Signatures and Acceptances of Agreement

The undersigned delegates to the International Civil Aviation Conference, convened in Chicago on November 1, 1944, have affixed their signatures to this Agreement with the understanding that the Government of the United States of America shall be informed at the earliest possible date by each of the governments on whose behalf the Agreement has been signed whether signature on its behalf shall constitute an acceptance of the Agreement by that government and an obligation binding upon it.

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

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

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

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

Note.—Names of Signatories not printed.