transport

Department:
Transport
REPUBLIC OF SOUTH AFRICA

**REPUBLIC OF SOUTH AFRICA**

# CIVIL AVIATION AMENDMENT BILL, 2016

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*(As introduced in the National Assembly (proposed section 76); explanatory summary of Bill published in Government Gazette No. of )*
*(The English Text is the official text of the Bill)*

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**(MINISTER OF TRANSPORT)**

[B - 2016]

**GENERAL EXPLANATORY NOTE:**

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| [ ] | Words in bold type in square brackets indicate omissions from existing enactments |
| _____ | Words underlined with a solid line indicate insertions in existing enactments |

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**BILL**

**To amend the Civil Aviation Act, 2009, so as to replace "Director" with "Chief Executive Officer"; to amend certain and insert new definitions; to rectify references to certain Ministries and Government Departments; to remove unnecessary words; to amend Chapter 4 of the Act so as to make provision for the operational independence of the accident and incident investigation; to rectify the provision regarding the establishment of the South African Civil Aviation Authority; to give the South African Civil Aviation Authority environment oversight function; to do away with the requirement for the development of a corporate government plan; to amend the provisions relating to the appointment and removal of the Chief Executive Officer of the South African Civil Aviation Authority and matters related to his or her functions and responsibilities;; to provide for the appointment of Acting Chief Executive Officer; to provide for the designation of Chairperson of the National Aviation Security Committee; to authorise the Minister to issue exemptions; to provide for additional offences; to provide for additional enforcement mechanisms; to extend the powers of the Minister to make regulations; to dispense with the establishment of consultative structures; and to provide for matters connected therewith.**

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

**General amendment of Act 13 of 2009**

**1.** The Civil Aviation Act, 2009 (hereinafter referred to as the principal Act) is hereby amended by the substitution for the word “Director”of the word “Chief Executive Officer” wherever it appears in the Act.

**Amendment of section 1 of Act 13 of 2009**

**2.** Section 1 of the principal Act), is hereby amended by—

(a) the substitution for the definition of "air service" of the following definition:

**“air service”** means an air service defined in Section 1 of the Air Services Licensing Act, **[1999]** 1990 (Act No. 115 of **[1999]** 1990);

(b) the insertion after the definition “board” of the following definition:

**“Chief Executive Officer”** means the Chief Executive Officer appointed in terms of section 85;”;

(c) the deletion of the definition of “Director”;

(d) the deletion of the definition of “Director of Investigations”;

(e) the substitution for the definition of "helistop" of the following definition:

"**helistop”** means a heliport either at a ground level or elevated on a structure, for landing and take-off of helicopters, but without auxiliary facilities, such as a parking area, waiting room and hangers but with the minimum prescribed safety equipment **[an aerodrome and any defined area or a structure intended or designed to be used either wholly or partly for the landing, departure and surface movement of helicopters]**;";

(f) the substitution for the definition of “investigator” of the following definition:

**“’investigator’** means a person **[appointed under section 26]** designated as such under section 33;”;

(g) the insertion of after the definition of “NASP” of the following definition:

**“nuclear material”** means nuclear material as defined in section 1 of the Nuclear Energy Act, 1999 (Act No. 46 of 1999);”;

(h) the substitution for the word [‘Organisation’] of the word ‘Organization’ in the definition of “Protocols”;

(i) the insertion after the definition of “Public Finance Management Act” of the following definition:

**“radioactive material”** means radioactive material as defined in section 1 of the Nuclear Energy Act, 1999 (Act No. 46 of 1999);”;

(j) the insertion after the definition of "restricted area" of the following definition:

**"safety programme"** means an integrated set of regulations and activities aimed at improving safety;”;

(k) the insertion after the definition of “search” of the following definition:

**“source material”** means source material as defined in section 1 of the Nuclear Energy Act, 1999 (Act No. 46 of 1999);”; and

(l) the insertion of after the definition of “Transit Agreement” of the following definition:

**“weapon of mass destruction”** means any weapon of mass destruction as defined in the Non-proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993).”.

**Amendment of section 2 of Act 13 of 2009**

**3.** Section 2 of the principal Act is hereby amended—

(a) by substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“**2.** (1) This Act, **[the Convention, the Transit Agreement and Protocol,]** except where expressly excluded under this Act, apply to—

“;

(b) by substitution in subsection (3) for the words preceding paragraph (a) of the following words:

"(3) This Act**[, the Convention and the Transit Agreement do]** does not apply to— ";

(c) by the substitution for subsection (4) of the following subsection:

"(4) Notwithstanding subsection (3), Part 1 of Chapter 11 **[and the Civil Aviation Regulations, 1997, apply]** applies to—

(a) an aircraft belonging to the South African National Defence Force,**[and]** South African Police Service and Customs; and

(b) an aircraft in use exclusively by the South African Defence Force,**[and]** South African Police Service and Customs,

where such aircraft are in flight through controlled airspace or in use at non-military aerodrome and heliports."; and

(d) by the insertion after subsection (4) of the following subsection:

"(5) Notwithstanding subsection (3), the Minister may, after consultation with the cabinet members responsible for defence, police and customs, by notice in the *Gazette,* determine which provisions of the civil aviation regulations are applicable to the aircraft referred to in subsection (3).".

**Amendment of section 3 of Act 13 of 2009**

**4.** Section 3 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

"**Power to carry out and apply Convention[,] and Transit Agreement [and Protocol]**"

(b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"(1) The Minister**[, in consultation with the Civil Aviation Authority,]** may"; and

(c) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) do all things necessary to ratify, or cause to be ratified on behalf of the Republic, any amendments of or additions to the Convention**[,]** <u>and</u> the Transit Agreement **[or Protocol]** which may be made; and".

**Amendment of section 4 of Act 13 of 2009**

**5.** Section 4 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

**"Functions of Minister in connection with Act[, Convention and Transit Agreement]";** and

(b) by the deletion of subsection (4).

**Amendment of section 5 of Act 13 0f 2009**

**6.** Section 5 of the principal Act is hereby amended—

*(a)* by the substitution for the heading of the following heading:

"**Enactment of Convention [,]** <u>**and**</u> **Transit Agreement [and Protocol]**"; and

*(b)* by the substitution for subsections (1) and (2) of the following subsections:

"(1) The Convention **[,]** <u>and</u> Transit Agreement **[and Protocol]** referred to in schedule 3 and 4, respectively, have subject to this Act, the force of law in the Republic.

(2) The Minister may by notice in the Gazette amend schedules 3 and 4 to reflect any changes made to the Convention**[,]** <u>and</u> the Transit Agreement **[and Protocol]** if those changes are binding on the Republic in terms of section 231 of the Constitution.".

**Amendment of section 7 of Act 13 of 2009**

**7.** Section 7 of the principal Act is hereby amended by substitution for subsections (1) and (2) of the following subsections:

(1) Subject to the Mineral and Petroleum Resources Development Act, 2002, (Act No. 28 of 2002), the National Environment Management Act, 1998 (Act No. 107 of 1998), the National Water Act, 1998 (Act No. 36 of 1998), and the Constitution, the Minister **[of Minerals and Energy]** responsible for mineral resources may permit the use of land held under any reconnaissance permission, exploration, prospecting or mining authorisation or permission, for the establishment of **[airports or heliports]** aerodrome.

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

**Amendment of section 8 of Act 13 of 2009**

**8.** Section 8 of the principal Act is hereby amended—

(a) by substitution for subsection (1) of the following subsection:

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

(b) by substitution for subsection (5) of the following subsection:

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

**Substitution of Chapter 4 of Act 13 of 2009**

**9.** The following chapter is hereby substituted for Chapter 4 of the principal principal Act:

**"CHAPTER 4**

**PART 1**

**AIRCRAFT ACCIDENTS AND INCIDENTS INVESTIGATION AND ESTABLISHMENT OF AVIATION SAFETY INVESTIGATION BOARD**

**Application of Chapter**

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

(a) the Republic;

(b) any place that is under the Republic's air traffic control; and

(c) any other place, if—

(i) the Republic is requested to investigate by an appropriate authority in terms of the Convention; or

(ii) the aircraft accident or incident involves an aircraft in respect of which, or that is operated by a person to whom, a South African aviation authorisation, aviation certificate or any aviation approval document has been issued.

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

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

(3) In this Chapter "department"means any department in the national sphere of Government.

**Establishment of Aviation Safety Investigation Board**

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

**Objects of Aviation Safety Investigation Board**

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

(a) conducting independent investigations, including, when necessary, public inquiries into selected aircraft accidents and incidents in order to make findings as to their causes and contributing factors;

(b) identifying safety deficiencies as evidenced by aircraft accidents and incidents;

(c) making recommendations designed eliminate ort reduce any such safety deficiencies;

(d) reporting publicly on its investigations or on the findings in relation thereto;

(e) promoting compliance with the provisions and procedures of Annex 13 to the Convention;

(f) investigating aircraft accidents and incidents in compliance with the provisions and procedures of Annex 13 to the Convention; and

(g) discharging all other findings and obligations in compliance with the provisions and procedures of Annex 13 to the Convention.

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

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

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

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

(6) Where the causes and contributing factors of any aircraft accident or incident is known to the Aviation Safety Investigation Board it may refuse to investigate such aircraft accident or incident.

(7) Subject to the provisions of the South African Maritime and Aeronautical Search and Rescue Act, 2002 (Act No. 44 of 2002), and the Convention, the South African Police Service, shall have rights of prior access to any scene of aircraft accident or incident.

**Jurisdiction of Aviation Safety Investigation Board**

**12.** (1) Notwithstanding any other legislation, the Aviation Safety Investigation Board must, in compliance with Annex 13 to the Convention, investigate any aircraft accident and incident for the purpose of carrying out its objects.

(2) Notwithstanding any other legislation—

*(a)* no department, other than the Department of Defence, may commence an investigation into an aircraft accident or incident for the

purpose of making findings as to its causes and contributing factors, if—

(i) that aircraft accident or incident is being or has been investigated by the Aviation Safety Investigation Board under this Act; or

(ii) the Department has been informed that that aircraft accident or incident is proposed to be investigated by the Aviation Safety Investigation Board under this Act; and

*(b)* where an investigation into an aircraft accident or incident is commenced by the Aviation Safety Investigation Board under this Act after an investigation into that aircraft accident or incident has been commenced by a department other than the Department of Defence, that department must forthwith discontinue its investigation, to the extent that it is an investigation for the purpose of making findings as to the causes and contributing factors of the aircraft accident or incident.

(3) Subsection (2) does not prevent—

*(a)* a department from commencing an investigation into or continuing to investigate an aircraft accident or incident for any purpose other than that of making findings as to its causes and contributing factors, or from investigating any matter that is related to the aircraft accident or incident and that is not being investigated by the Aviation Safety Investigation Board; or

*(b)* the South African Police Service from investigating the aircraft accident or incident for any purpose for which it is empowered to conduct investigations.

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

*(a)* a military conveyance and an aircraft, none of which is a military conveyance;

*(b)* a military conveyance and a civil aviation facility; or

*(c)* a military aviation facility and an aircraft, none of which is a military conveyance.

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

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

**Coordination of investigations and remedial actions**

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

(2) Where conflicting interests arise between the Aviation Safety Investigation Board and a department in coordinating their activities pursuant to subsection (1), the requirements and interests of the Aviation Safety Investigation Board, subject to subsection (3) and any agreement entered into under section 27, take precedence and are paramount to the extent of the conflict.

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

(4) Where an aircraft accident or incident referred to in subsection (1) is being investigated by the Aviation Safety Investigation Board, the Department of Defence, the South African Police Service or a visiting force, the Aviation Safety Investigation

Board and the Minister of Defence must take all reasonable measures to ensure that the investigations are coordinated.

**Compatible procedures and practices**

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

*(a)* any international agreements or Conventions to which the Republic is a party; and

*(b)* investigation procedures and practices followed by the judicial inquests in terms of the Inquests Act, 1959 (Act No. 58 of 1959).

(2) The Aviation Safety Investigation Board must make all reasonable efforts to enter into agreements in order to ensure that the procedures and practices followed by the Aviation Safety Investigation Board are compatible as far as possible with those followed by the judicial inquests in terms of the Inquests Act, 1959.

## PART 2

## APPOINTMENT OF MEMBERS OF AVIATION SAFETY INVESTIGATION BOARD

**Procedure in appointing members of Aviation Safety Investigation Board,**

**15.** (1) The Aviation Safety Investigation Board consists of a Chairperson and at least four other members appointed in accordance with the following principles, namely-

*(a)* participation by the public in the nomination process ; and

*(b)* transparency and openness taking into account the objects and principles of this Act.

(2) *(a)* Before the members of the Board are appointed, the Minister must, through the media, invite members of the public to apply or nominate persons for appointment to the Aviation Safety Investigation Board and who comply with the criteria contemplated in subsection (3).

*(b)* The Minister must after receipt of the nominations and applications contemplated in paragraph *(a)* invite at least four aviation experts and the Chief Executive Officer to assist in the selection and evaluation of members eligible for appointment to the Aviation Safety Investigation Board.

*(c)* The aviation experts referred to in paragraph *(b)* must compile a shortlist consisting of not more than ten persons

*(d)* The Minister must, within 30 days from the date of appointment of the members of the Aviation Safety Investigation Board, notify Parliament of such appointment.

*(e)* The aviation experts contemplated in paragraph *(b)* may include—

(i) a person with knowledge of and experience in the aviation industry;

(ii) a person with a legal background; and

(iii) a person with knowledge of and experience in aviation accident and incident investigations.

**Requirements for appointment as members of Aviation Safety Investigation Board**

**16.** (1) Members appointed to the Aviation Safety Investigation Board must be persons who—

*(a)* are committed to fairness, freedom of expression, openness and accountability on the part of those entrusted with the governance of a public service;

*(b)* when viewed collectively be knowledgeable of aviation transportation having regard to the following factors:

(i) technical knowledge in matters relating to civil aviation;

(ii) special skills, professional standing, expertise or experience in matters concerning civil aviation; and

(iii) possess suitable qualifications, expertise and experience in the field of aviation accident and incident investigation or any other relevant expertise or qualifications.

**Filling of vacancies and term of office of Aviation Safety Investigation Board**

**17.** (1) In fixing a term of appointment or reappointment, the Minister must endeavour to ensure, to the extent that it is practical to do so, that, notwithstanding periodic changes in the membership of the Aviation Safety Investigation Board, it remains constituted of persons who have had previous experience as members of the Board.

(2) Any vacancy on the Aviation Safety Investigation Board must be filled, by the appointment by the Minister in terms of section 15(2), of another person for the unexpired portion of the period for which the vacating member was appointed.

(3) The Minister may appoint from the list contemplated in section 15(2)*(c)* any eligible person to act—

*(a)* in any member's stead; or

*(b)* in a temporary capacity in any vacancy in the Aviation Safety Investigation Board, for such period as the Minister may determine.

(4) A member of the Aviation Safety Investigation Board is a part time member and must hold office for a term not exceeding five years and is on expiration of such member's term of office eligible for reappointment for not more than one additional term.

**Disqualification and removal of members of Aviation Safety Investigation Board**

**18.** (1) A person may not be appointed as a member of the Aviation Safety Investigation Board if he or she—

*(a)* is not a South African citizen or permanently resident in the Republic;

*(b)* is a member of Parliament, any provincial legislature or any municipal council;

*(c)* is an office-bearer or employee of any party, movement or organisation of a party-political nature;

*(d)* is an unrehabilitated insolvent;

*(e)* has been declared by a court to be mentally ill or incapacitated;

*(f)* has at any time been convicted, whether in the Republic or elsewhere, of—

(i) theft, fraud, forgery or uttering a forged document, perjury, an offence in terms of the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), Part 1 to 4,or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any other offence involving dishonesty; or

(ii) an offence under this Act;

*(g)* has been sentenced, after the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), to a period of imprisonment without the option of a fine; or

*(h)* has at any time been removed from an office of trust on account of misconduct.

(2) A member of the Aviation Safety Investigation Board may be removed from office by the Minister—

*(a)* for absence from three consecutive meetings of the Aviation Safety Investigation Board without the permission of the Chairperson of the Aviation Safety Investigation Board and without a good cause;

*(b)* if such a member becomes disqualified as contemplated in subsection (1)*(b)* to *(h)*.

*(c)* if such member repeatedly fails to perform the duties of office efficiently;

*(d)* if, due to any physical or mental illness or any other cause, such member becomes incapable of performing the functions of that office or performs them inefficiently; or

*(c)* for misconduct.

(3) The member vacates his or her office immediately if he or she—

*(a)* is convicted—

(i) whether in the Republic or elsewhere of murder, robbery, theft, fraud, forgery or uttering a forged document, perjury or any offence involving dishonesty; or

(ii) of any offence in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), the Companies Act, 2008 (Act No. 71of 2008), Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), the Public Finance Management Act or of contravening this Act;

*(b)* is convicted of an offence during his or her term of office and sentenced to a period of imprisonment without the option of a fine; or

*(c)* becomes a political office bearer.

**Performance agreement between Minister and Aviation Safety Investigation Board**

**19.** (1) The Minister and the Aviation Safety Investigation Board must enter into an agreement about the performance of the Aviation Safety Investigation Board's functions in terms of this Act.

(2) The agreements contemplated in subsection (1) must be in writing and relate to—

*(a)* the Minister's requirements in respect of the Aviation Safety Investigation Board's scope of business, efficiency and achievement of objectives and

*(b)* any other matter relating to the performance of the Aviation Safety Investigation Board's functions under this Act.

(3) The Minister and the Aviation Safety Investigation Board may in writing amend the performance agreement when necessary.

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

**20.** (1) Subject to subsection (3), the members of the Aviation Safety Investigation Board must be paid the remuneration and other allowances that are determined by the Minster in consultation with the Minister of Finance.

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

(3) An appointed member who is in the full-time service of the State or any State owned institution is not, in respect of the duties performed by him or her as a member of the Aviation Safety Investigation Board, paid any—

(a) remuneration in addition to his or her remuneration;

(b) allowance in respect of subsistence and travel at a rate higher than that applicable to him or her as a public servant.

**Meetings of Aviation Safety Investigation Board**

**21.** (1) The Aviation Safety Investigation Board must meet at such times and place as may be determined by the Chairperson from time to time for the purposes of managing the aircraft accidents and incidents investigation matters.

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

(3) In the event of the absence or incapacity of the Chairperson the members present must elect one member to preside at such meeting.

(4) At any given time, the majority of members of the Aviation Safety Investigation Board form a quorum.

**Administration**

**22.** All administrative work as well as secretarial functions in connection with the meetings of the Aviation Safety Investigation Board shall be carried out by employees designated by the Director-General for such purpose.

**Public Finance Management Act binds Aviation Safety Investigation Board**

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

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

**24**. The expenditure in connection with the execution of the functions of the Aviation Safety Investigation Board must be paid out of—

(a) money appropriated by Parliament for such purpose;

(b) levies imposed by or under a separate legislation; or

(c) charges for any service rendered.

**Conflict of interest**

**25.** (1) A member of the Aviation Safety Investigation Board may not attend a meeting or participate in discussions relating to a matter in which he or she or his or her spouse, immediate family member, life partner or business associate, has a financial interest or an interest which might preclude him or her from exercising or performing his or her power, duties or functions in an objective manner.

(2) Any member of the Aviation Safety Investigation Board may not hold any direct or indirect financial interest in any civil aviation activity or the civil aviation industry without prior approval of the Minister.

(3) During the term of office of a member, in addition to the prohibitions described in this section, the member of the Aviation Safety Investigation Board must not carry on any activity inconsistent with the performance of the member's duties under this Act.

**Agreements between Aviation Safety Investigation Board and Chief Executive Officer**

**26.** (1) The Aviation Safety Investigation Board and the Chief Executive Officer must enter into agreements with regard to—

*(a)* the provision of investigators to the Aviation Safety Investigation Board for purposes of investigation of any aircraft accidents or incidents; and

*(b)* any other matter relating or incidental to the investigation of aircraft accidents and incidents by the Aviation Safety Investigation Board.

(2) When entering into such agreements the parties must avoid a conflict of interest.

(3) A copy of such agreement and any amendment thereto must be filed with the Director-General within 30 days of conclusion.

**Agreements between Aviation Safety Investigation Board and other departments or entities**

**27.** (1) The Aviation Safety Investigation Board must make all efforts to enter into agreements with departments or entities—

*(a)* providing for the coordination of activities between the Aviation Safety Investigation Board and departments with respect to aircraft accidents and incidents, including investigation procedures and practices and requirements for reporting aircraft accidents and incidents; and

*(b)* providing for procedures to be followed in the event that conflicting interests arise between the Aviation Safety Investigation Board and a department during their activities with regard to aircraft accidents and incidents.

(2) The Aviation Safety Investigation Board must ensure that a copy of such agreement and any amendment thereto is provided to the Director-General within 30 days of conclusion.

**Independence and impartiality of Aviation Safety Investigation Board**

**28.** (1) The members of the Aviation Safety Investigation Board, investigators and accredited representatives, experts and advisers must serve impartially and independently and exercise, carry out and perform their powers, duties and functions in good faith and without fear, favour, bias or prejudice, subject only to this Act and the Convention.

(2) The Aviation Safety Investigation Board must function without any political or commercial interference.

(3) A member of the Aviation Safety Investigation Board, investigators, accredited representatives, experts and advisers may not conduct an investigation in terms of this Act or render assistance with regard to a matter in which he or she has any pecuniary or other interest which might preclude him or her from exercising his or her powers or from carrying out or performing duties and functions in a fair, unbiased and proper manner.

(4) If any member of the Aviation Safety Investigation Board, investigators, accredited representatives, experts and advisers of the Aviation Safety Investigation Board fail to disclose an interest contemplated in subsection (3), the Aviation Safety Investigation Board may take such steps as it considers necessary to ensure a fair, unbiased and proper investigation.

## PART 3

## FUNCTIONS AND POWERS OF AVIATION SAFETY INVESTIGATION BOARD

**Functions of Aviation Safety Investigation Board**

**29.** (1) The functions of the Aviation Safety Investigation Board are to—

*(a)* take steps to achieve the objects as contemplated in section 11 of this Act;

*(b)* oversee the investigation of aircraft accidents and incidents in compliance with Annex 13 to the Convention;

*(c)* advise any authority or Contracting State, State of Registry, State of the Operator, State of Design and State of Manufacture with regard to any safety recommendation or safety matter emanating from any investigation;

*(d)* oversee the performance of the functions and of the activities of the persons appointed or designated by it to perform the work of the Aviation Safety Investigation Board;

*(f)* submit a final report to all recipient States in compliance with Chapter 6 of Annex 13 to the Convention concerning any aircraft accident or incident investigated by the Aviation Safety Investigation Board; and

*(g)* monitor the implementation of safety recommendations issued by a Contracting States.

**Powers of Aviation Safety Investigation Board**

**30.** (1) The Aviation Safety Investigation Board may do all that is necessary or expedient to perform its functions effectively, which includes the power to—

*(a)* obtain, by agreement, the services of any person, including any organ of state, for the performance of any specific act or function;

*(b)* investigate aircraft accidents and incidents;

*(c)* determine categories of aircraft accidents and incidents that will be investigated by the Aviation Safety Investigation Board;

*(d)* delegate, the investigation of any aircraft accident or incident to any other Contracting State, in accordance with Annex 13 to the Convention;

*(e)* collect and disseminate relevant information;

*(f)* reopen any investigation in compliance with Annex 13 to the Convention;

*(g)* establish an aircraft accident and incident reporting system in compliance with Annex 13 to the Convention to facilitate the collection of information on actual or potential safety deficiencies;

*(h)* upon request conduct investigations on behalf of other contracting States;

*(i)* perform legal acts, including acts in association with or on behalf of any other person or organ of state;

*(j)* institute or defend any legal action; and

*(k)* do anything that is incidental to the exercise of any of its powers.

(2) If the accident occurred within the Republic, the Aviation Safety Investigation Board has the power to—

*(a)* summon and examine witnesses under oath and to call for the production and inspection of books, logs, certificates, licences, medical records and other documents, and may grant inspection thereof; and

*(b)* summon any person to give evidence before it, or to produce any official document or such other information or object as may be necessary for the performance of the Aviation Safety Investigation Board's functions.

(3) The Aviation Safety Investigation Board must determine the procedures in relation to the conduct of its meetings.

(4) The Aviation Safety Investigation Board may make procedures in relation to the reporting and investigation of aircraft accidents and incidents, including the participation of accredited representatives, advisers, experts and observers, in compliance with Annex 13 to the Convention.

(5) The Aviation Safety Investigation Board may authorise any of its members or investigators to act as the Aviation Safety Investigation Board's accredited representative where the Republic is not the State of Occurrence, and such accredited representative may be accompanied by advisers and experts as the Aviation Safety Investigation Board may consider necessary.

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

**Annual report**

**31.** (1) The Aviation Safety Investigation Board must, as soon as practicable after 31 March of each year, but not later than 31 December of that year, submit to the Minister a report giving particulars regarding the activities of the Board during the year which ended on the first mentioned date.

(2) The Minister must cause copies of the report submitted under subsection (1) to be tabled in Parliament within 30 days of receipt of that report, if Parliament is not in session, within 30 days of the ensuing session.

**Delegation of powers**

**32.** (1) The Aviation Safety Investigation Board may delegate to any competent person, subject to any limitations specified in the instrument of delegation, any of the powers conferred or duties imposed on the Aviation Safety Investigation Board under this Act, other than the power—

*(a)* of delegation under this subsection;

*(b)* to make rules and procedures; and

*(c)* to make recommendations.

(2) The Aviation Safety Investigation Board may revoke a delegation made under this section in writing at any time.

**Designation and powers of investigators**

**33.** (1) The Aviation Safety Investigation Board may designate an investigator in charge and any number of investigators to investigate any aircraft accident or aircraft incident in the Republic.

(2) An investigator designated in terms of subsection (1) has authority to—

*(a)* have unrestricted access to and control over an aircraft which has been involved in an accident or incident, the wreck or wreckage, the place where

the aircraft, the wreck or wreckage is located and the places where marks resulting from the aircraft accident or incident which may be of assistance in an investigation, are located;

*(b)* preserve an aircraft which has been involved in an accident or incident or the wreck or wreckage, any remains and any marks resulting from the aircraft accident or incident which may be of assistance in the investigation, by any means available, including photographic means;

*(c)* examine an aircraft involved in an accident or incident, the wreck or wreckage, any part or component thereof or any item transported therein or any marks resulting from the aircraft accident or incident which may be of assistance in the investigation, and to remove any such aircraft, wreck or wreckage, or any part or component thereof or any item transported therein for the purpose of the investigation or for an inquiry in terms of section 69 or 70;

*(d)* compile reports in connection with the investigation;

*(e)* have unrestricted access to all documents, including relevant medical records, books, notes, photographs, recordings and transcripts which the investigator-in-charge may consider necessary for the investigation and which must be produced without delay by the possessor thereof when so requested;

*(f)* obtain information and take statements, from any person, which may be necessary for the investigation;

*(g)* have unrestricted access to and control over all relevant evidence, including flight recorders and air traffic service recordings;

*(h)* summon and examine witnesses under oath and call for the production, and grant inspection, of books, logs, certificates, licences and other documents, including medical information and records, and summon any person to give evidence before it or to produce any official document or such other information or object as may be necessary for the performance of the Aviation Safety Investigation Boards functions; and

*(i)* regulate, prohibit and control any access to the scene of any aircraft accident or incident.

(3) An investigator who is investigating an aircraft accident or incident may—

*(a)* where the investigator believes on reasonable grounds that a person is in possession of information relevant to that investigation—

(i) by notice in writing signed by the investigator, require the person to produce the information to the investigator or to appear before the investigator and give a statement referred to in subsection (2)*(f)* under oath or solemn affirmation if required by the investigator; and

(ii) make such copies of or take such extracts from the information as the investigator considers necessary for the purposes of the investigation;

*(b)* where the investigator believes on reasonable grounds that the medical examination of a person who is directly or indirectly involved in the operation of an aircraft, or may be relevant to the investigation, by notice in writing signed by the investigator require the person to submit to a medical examination;

*(c)* where the investigator believes on reasonable grounds that a physician or other health practitioner has information concerning a patient that is relevant to that investigation, by notice in writing signed by the investigator require the physician or practitioner, if so authorised by the patient of such physician or practitioner, to provide that information to the investigator; or

*(d)* where the investigator believes on reasonable grounds that the performance of an autopsy on the body of a deceased person, or the carrying out of other medical examinations of human remains, is or may be relevant to the conduct of the investigation, cause such an autopsy or medical examination to be performed and, for that purpose, by notice in writing signed by the investigator, require the person having custody of the body of the deceased person or other human remains to permit the performance of that autopsy or that medical examination.

(4) The requirement under subsection (3) that a person submit to a medical examination shall not be construed as a requirement that the person

submit to any procedure involving surgery, perforation of the skin or any external tissue or the entry into the body of any drug or foreign substance.

(5) Where an investigator has required a person to do something under subsection (3)*(a)*, *(b)*, *(c)* or *(d)* and the person has refused to do as required, the investigator may make an application to a court of competent jurisdiction, setting out the facts, and the court may inquire into the matter and, after giving the person an opportunity to comply with the requirement, take steps for the punishment of the person as if the person had been guilty of contempt of the court, or may make such other order as it finds appropriate.

**Search and seizure by appointed investigators**

**34.** (1) In the execution of the authority contemplated in section 33 an investigator may search and seize any property or item, including medical records, recorders and air traffic service recordings of an aircraft accident or aircraft incident without a warrant.

(2) An investigator in respect of this Act is considered to have been appointed as a peace officer by the Minister responsible for justice in terms of section 334 of the Criminal Procedure Act for the Republic, and for the purpose of exercising the powers contemplated in sections 40, 41, 44, 45, 46, 47, 48, 49 and 56 of the Criminal Procedure Act.

(3) In the execution of the authority contemplated in section 33 an investigator may without a warrant search and seize any property or item, including medical records, recorders and air traffic service recordings of an aircraft accident or aircraft incident—

*(a)* if the person concerned consents to the search for and the seizure of the property or item, including medical records, recorders and air traffic service recordings of an aircraft accident in question, or if the person who may consent to the search of the premises consents to such search and the seizure of the property or item, including medical records,

recorders and air traffic service recordings of an aircraft accident articles in question; or

*(b)* if he on reasonable grounds believes—

(i) that a search warrant will be issued to him if he applies for such warrant; and

(ii) that the delay in obtaining such warrant would defeat the object of the search without a warrant.

(4) An investigator may use the powers in terms of this section only to serve the purposes of this Act and matters incidental thereto, and must take the necessary steps to secure the safekeeping of the property or items seized.

(5) Before acting under this section, an investigator must, on request, produce the investigator' certificate of appointment issued by the Aviation Safety Investigation Board.

**Power to test items seized**

**35.** (1) Where any item is seized by an investigator under section 34 , the investigator—

*(a)* may, subject to paragraph *(b)*, cause such tests, including tests to destroy, to be conducted on the item as are necessary for the purposes of the investigation in respect of which the item was seized;

*(b)* must, to the extent that it is practical and safe to do so and does not unreasonably impede the progress of the investigation, take all reasonable measures to invite the owner of the item, and any person who appears on reasonable grounds to be entitled to it, to be present at any tests referred to in paragraph *(a)*; and

*(c)* subject to the need to conduct such tests, shall cause the item to be preserved pending its return in accordance with section 36.

(2) Nothing in this section must be taken—

*(a)* to imply that an item seized pursuant to subsection (1) may not be an aircraft or any part thereof; or

*(b)* to authorise the exercise of a power by an investigator in circumstances where the exercise of that power would be inconsistent with the objective of the investigation.

**Return of seized property**

**36.** (1) Any item seized pursuant to section 34, except on-board recordings as defined in section 47, must, unless—

*(a)* the owner thereof or a person who appears on reasonable grounds to be entitled to it consents in writing; or

*(b)* a court of competent jurisdiction orders otherwise,

be returned to that owner, person, or the person from whom it was seized, as soon as possible after it has served the purpose for which it was seized.

(2) A person from whom any item was seized pursuant to section 34, except on-board recordings as defined in section 47, or the owner or any other person who appears on reasonable grounds to be entitled thereto, may apply to a court of competent jurisdiction for an order that the seized item be returned to the person making the application.

(3) Where, on an application under subsection (2) of this section, the court is satisfied that the seized item has served the purpose for which it was seized or should, in the interests of justice, be returned to the applicant, the court may grant the application and order the seized item to be returned to the applicant, subject to any terms or conditions that appear necessary or desirable to ensure that the item is safeguarded and preserved for any purpose for which it may subsequently be required by the Aviation Safety Investigation Board under this Act.

(4) This section does not apply in respect of any item seized and tested to destruction in accordance with section 35.

**Public inquiry**

**37.** (1) Where, in the course of an investigation of an aircraft accident or incident, the Aviation Safety Investigation Board considers it necessary that a public inquiry be made into the aircraft accident or incident, the Chairperson may designate a person or persons, who may be, or may include, the Chairperson, to conduct a public inquiry into that aircraft accident or incident in accordance with any rules made under section 63 and to report to the Aviation Safety Investigation Board thereon.

(2) Any person designated to conduct a public inquiry under this section has and may exercise the powers of a person appointed as an investigator, subject to any restrictions specified in the designation.

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

**38.** (1) Where a department is notified of an aircraft accident or incident in which such department has a direct interest and which the Aviation Safety Investigation Board has the power to investigate under this Act, that department must—

*(a)* forthwith provide the Aviation Safety Investigation Board with particulars of the aircraft accident or aircraft incident; and

*(b)* forthwith, after complying with paragraph *(a)*, advise the Aviation Safety Investigation Board of any investigation that the department plans to conduct and of any remedial measures that the department plans to take.

(2) An investigator authorised by the Aviation Safety Investigation Board may attend as an observer at an investigation conducted by the department referred to in subsection (1) or during the taking of remedial measures by that department following an aircraft accident or incident.

(3) Subject to any other Act the Aviation Safety Investigation Board must, on request, be provided with and may review and comment on any interim or final report prepared in respect of an investigation conducted by the department referred to in subsection (1)*(b)*.

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

**39.** Where the Aviation Safety Investigation Board is notified of an aircraft accident or incident, it must—

*(a)* forthwith provide particulars of the aircraft accident or incident to any Minister responsible for a department having a direct interest in the aircraft accident or incident; and

*(b)* forthwith after complying with paragraph *(a)*, advise the Minister referred to in paragraph *(a)* of any investigation that it plans to conduct and the scope of the investigation.

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

**40.** (1) Subject to any conditions that the Aviation Safety Investigation Board may impose, a person may attend as an observer at an investigation of an aircraft accident or incident conducted by the Aviation Safety Investigation Board if the person—

*(a)* is designated as an observer by the Minister responsible for a department having a direct interest in the subject matter of the investigation;

*(b)* has observer status or is an accredited representative or an adviser to an accredited representative, pursuant to an international agreement or convention relating to transportation to which the Republic is a party; or

*(c)* is invited by the Aviation Safety Investigation Board to attend as an observer because, in the opinion of the Aviation Safety Investigation Board, the person has a direct interest in the subject matter of the investigation and will contribute to achieving the Aviation Safety Investigation Board's objects.

(2) The Aviation Safety Investigation Board may remove an observer from an investigation if the observer contravenes any condition imposed by the Aviation Safety Investigation Board on the observer's presence or if, in the Aviation Safety Investigation Board's opinion, the observer has a conflict of interest that impedes the conduct of the investigation.

## PART 4

## REPORTING ON COMPLETION OF AIRCRAFT ACCIDENT OR AIRCRAFT INCIDENT INVESTIGATION

### Aircraft accident or incident investigation report

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

(2) Before making public a report under subsection (1) the Aviation Safety Investigation Board must—

*(a)* send a copy of the draft report on its findings and any safety deficiencies that it has identified to each department and any other person who, in the opinion of the Aviation Safety Investigation Board, has a direct interest in the findings of the Aviation Safety Investigation Board;

*(b)* give that department or interested person a reasonable opportunity to make representations to the Aviation Safety Investigation Board with regard to the draft report before the final report is prepared; and

*(c)* comply with the provisions of Annex 13 to the Convention.

(3) The period for submission of any representations must be within 60 days of receipt of the report.

(4) No person may communicate or use the draft report or permit its communication or use for any purpose, other than the taking of remedial measures, not strictly necessary to the study of, and preparation of representations concerning, the draft report.

(5) The Aviation Safety Investigation Board must provide an interim report on the progress and findings of an investigation—

*(a)* on written request made in respect of that investigation, to any Minister responsible for a department having a direct interest in the subject matter of the investigation; and

*(b)* to any coroner investigating the aircraft accident or aircraft incident, where the aircraft accident or aircraft incident involved a fatality and significant progress has been made in the Aviation Safety Investigation Board's investigation.

(6) A person, other than a Minister of a department, who is provided with an interim report under subsection (5) must not use the report or permit its use for any purpose not strictly necessary to the examination of the report.

(7) The Aviation Safety Investigation Board must reconsider its findings and recommendations pursuant to an investigation that it has conducted under this Act where, in its opinion, new material facts appear.

**Manner of dealing with representations**

**42.** (1) Representations made pursuant to section 41 may be submitted tin any manner the Aviation Safety Investigation Board considers appropriate.

(2) The Aviation Safety Investigation Board must—

*(a)* keep a record of those representations;

*(b)* consider those representations before preparing its final report; and

*(c)* notify, in writing, each of the persons who made those representations, how the Aviation Safety Investigation Board has disposed of that person's representations.

(3) A representation is privileged, except if it is a representation made by a Minister responsible for a department having a direct interest in the findings of the Aviation Safety Investigation Board subject to this Act or to a written authorisation from the author of a representation, and no person may knowingly communicate any representation or permit it to be communicated to any other person.

(4) The Aviation Safety Investigation Board may use representations it considers necessary in the interests of aviation safety.

(5) If requested to do so by a judicial inquest instituted in terms of the Inquests Act, 1959, conducting an inquest into any circumstances in respect of which representations were made to the Aviation Safety Investigation Board, it must make such representations available to such inquest.

(6) Except for use for the purpose of an investigation by a judicial inquest in terms of the Inquest Act, no person may use any representations made to the Aviation Safety Investigation Board under this section in any criminal, civil, disciplinary or other proceedings.

**Notification of findings and recommendations**

**43.** (1) At any time during its investigation of an aircraft accident or incident, the Aviation Safety Investigation Board must notify forthwith in writing the Minister or any person who in its opinion has a direct interest in its findings and recommendations, whether interim or final, that in its opinion the matter requires urgent action

(2) On completion of its investigation of an aircraft accident or incident, the Aviation Safety Investigation Board must—

(a) notify forthwith in writing any Minister or person who, in its opinion, has a direct interest in its findings as to the causes and contributing factors of the

aircraft accident or incident, any safety deficiencies it has identified and any recommendations resulting from its findings; and

*(b)* comply with the provisions of Annex 13 to the Convention and furnish the Civil Aviation Authority with such findings as to the causes and contributing factors of the aircraft accident or incident, and safety deficiencies it has identified and any recommendations resulting from its findings.

**Response by Minister**

**44.** (1) A Minister of a department who is notified of the findings and recommendations of the Aviation Safety Investigation Board under section 43 (2)*(a)* must, within 90 days after being so notified—

*(a)* advise the Aviation Safety Investigation Board in writing of any action taken or proposed to be taken in response to those findings and recommendations; or

*(b)* provide written reasons to the Aviation Safety Investigation Board if no action will be taken or if the action to be taken differs from the action that was recommended.

(2) Where the Aviation Safety Investigation Board is satisfied that a Minister is unable to respond to the Aviation Safety Investigation Board within the period referred to in subsection (1) the period may be extended as the Aviation Safety Investigation Board considers necessary.

## PART 5

## APPEALS AGAINST FINDINGS OF AVIATION SAFETY INVESTIGATION BOARD AND REOPENING OF AIRCRAFT ACCIDENT OR INCIDENT INVESTIGATION

**Appeal against findings on aircraft accident and incident investigation**

**45.** (1) Any affected person who feels aggrieved by the findings on an investigation may appeal against such findings to an appeal committee, within 60 days after the publication of such findings.

(2) An appeal must be lodged in writing, stating the reasons why the findings should be varied or set aside.

(3) A person lodging an appeal must submit a copy of the appeal and any documents or records supporting such appeal, to the Aviation Safety Investigation Board and must furnish proof of such submission to the appeal committee.

(4) The Aviation Safety Investigation Board must, within 60 days of receipt of the copy of the appeal referred to in subsection (3), deliver a written reply to such appeal to the appeal committee.

(5) The appeal committee must adjudicate the appeal in accordance with Appeal Committee Rules as approved by the Minister.

(6) The appeal committee may confirm, vary or set aside the findings referred to in subsection (1).

(7) The appeal committee may keep in abeyance an appeal lodged in terms of this section if the Minister has applied or intends to apply the provisions of section 69.

**Reopening of an aircraft accident or incident investigation**

**46.** (1) The Minister may, upon request, decide to reopen an investigation of an aircraft accident or incident if—

(a) new and significant evidence, which was not considered by the Aviation Safety Investigation Board exist and such evidence is likely to influence the findings of the Aviation Safety Investigation Board and the reopening of the investigation is in the interest of aviation safety; and

(b) the findingsof the Aviation Safety Investigation Board have been set aside in terms of section 45(6).

(2) In making a decision in subsection (1), the Minister may prescribe the condition accordning to which the reopened aircraft accident or incident shall be conducted provided that such conditions are not in conflict with the provisions of Annex 13 to the Convention.

## PART 6

## PRIVILEGED AND PROTECTED INFORMATION

### Definition of "on-board recording"

**47.** (1) In this Part, "on-board recording" means the whole or any part of—

*(a)* a recording of voice communications originating from, or received on or in, the flight deck of an aircraft; or

*(b)* a video recording of the activities of the personnel of an aircraft, that is made, using recording equipment that is intended not to be controlled by the personnel, on the flight deck of the aircraft,

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

### Privilege for on-board recordings

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

*(a)* knowingly communicate an on-board recording or permit it to be communicated to any other person; or

*(b)* be required to produce an on-board recording or give evidence relating to it in any legal, disciplinary or other proceedings.

### Access by investigator

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

**Use of on-board recording**

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

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

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

*(a)* a coroner who requests access thereto for the purpose of an investigation that the coroner is conducting; or

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

**Power of court or inquest**

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

or a person or persons appointed or designated to conduct a public inquiry into an aircraft accident or incident pursuant to this Act, must—

*(a)* cause a notice of the request to be given to the Aviation Safety Investigation Board, if the Aviation Safety Investigation Board is not a party to the proceedings;

*(b)* in camera, examine the on-board recording and give the Aviation Safety Investigation Board a reasonable opportunity to make representations with regard thereto; and

*(c)* if the court or a judicial inquest in terms of the Inquests Act concludes in the circumstances of the case that the public interest in the proper administration of justice outweighs the privilege attached to the on-board recording by virtue of this section, order the production and discovery of the on-board recording, subject to such restrictions or conditions as the court or a judicial inquest in terms of the Inquests Act considers appropriate, and may require any person to give evidence that relates to the on-board recording.

**Use of on-board recording prohibited**

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

*(a)* air crew members;

*(b)* airport vehicle operators;

*(c)* flight service station specialists; and

*(d)* persons who relay messages respecting air traffic control, or related matters.

**Definition of "communication record"**

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

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

**Statement privileged**

**55.** (1) For the purposes of this Part and section 33 (2)*(f)*—

*(a)* **"statement"** means—

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

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

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

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

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

**Access by judicial inquest and other investigators**

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

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

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

**Power of court or inquest with regard to statements**

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

*(a)* in camera, examine the statement; and

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

**Use of statement prohibited**

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

**Certain information privileged**

**59.** Where the identity of a person who has made a report to the Aviation Safety Investigation Board pursuant to rules made under section 61 is protected,

information that could reasonably be expected to reveal that identity is privileged, and no person must—

*(a)* knowingly communicate it or permit it to be communicated to any person; or

*(b)* be required to produce it or give evidence relating to it in disciplinary or other proceedings.

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

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

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

**Appearance of investigator**

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

**Opinions inadmissible**

**62.** An opinion of a member of the Aviation Safety Investigation Board, an investigator or accredited representative is not admissible as evidence in any legal, disciplinary or other proceedings.

## PART 6

## RULES

### Rules

**63.** (1) The Aviation Safety Investigation Board may, make rules for the establishment and administration of systems for the mandatory or voluntary reporting to the Aviation Safety Investigation Board of aircraft accidents and incidents.

(2) The Aviation Safety Investigation Board may make rules—

*(a)* prescribing the manner in which to exercise or carry out any of its powers, duties and functions under this Act and, generally, for its efficient operation;

*(b)* regulating the keeping and preservation of records, documents and other evidence relating to aircraft accidents and aircraft incidents;

(c) regulating the attendance of interested persons at tests to destruction conducted under section 35;

*(d)* defining, for the purposes of an investigation, the site or sites of an aircraft accident or aircraft incident and for the protection of those sites;

*(e)* defining the rights or privileges of persons attending investigations as accredited representatives, advisers, experts, and observers or with observer status;

*(f)* regarding the tariff of fees and expenses to be paid to any witness attending an investigation or at a public inquiry conducted under section 37 and the conditions under which a fee or expenses may be paid to any such witness;

*(g)* regarding the procedures and rules to be followed in conducting public inquiries under section 37; and

*(h)* generally for carrying out the purposes and provisions of this Act.

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

**Procedure for making rules**

**64.** (1) A copy of each rule that the Aviation Safety Investigation Board proposes to make under section 63 must be published in the *Gazette,* calling on interested persons to make representations to the Aviation Safety Investigation Board.

(2) The Aviation Safety Investigation Board must consider all representations made before issuing the rules.

(3) The rules shall come into operation on a date determined by the Aviation Safety Investigation Board by a notice in the Government Gazette.

## PART 7

## OFFENCES

**Offences**

**65.** (1) Any person who—

*(a)* without lawful excuse, wilfully resists or otherwise obstructs a member of the Aviation Safety Investigation Board or an investigator in the execution of powers or duties under this Act;

*(b)* knowingly gives false or misleading information at any investigation or public inquiry under this Chapter; or

*(c)* makes a report pursuant to section 60 that the person knows to be false or misleading,

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

(2) A person may not refuse or fail to produce information to an investigator, or to attend before an investigator and give a statement, in accordance with section 33(3)*(a)*, or to provide information in accordance with section 33(3)*(c)* or to make the body of a deceased person or other human remains available for the performance of an autopsy or medical examination in accordance with a requirement imposed under section 33(3)*(d)* of this Act.

(3) *(a)* No person may refuse or fail to submit to a medical examination in accordance with section 33(3)*(b)*, but information obtained pursuant to such an examination is privileged and and may be used only in the process of investigation of aircraft accidents and incidents in the interests of aviation safety.

*(b)* No person may—

(i) knowingly communicate it or permit it to be communicated to any person; or

(ii) be required to produce it or give evidence relating to it in any legal, disciplinary or other proceedings.

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

**Evidence**

**66.** (1) Subject to section 65(1)—

*(a)* a report purporting to have been signed by an investigator stating that the investigator has exercised any power pursuant to section 33 and stating the results of the exercise of the power; or

*(b)* a document purporting to have been certified by an investigator as a true copy of or extract from a document produced to the investigator pursuant to section 33, is admissible in evidence in any prosecution for an offence under this Act without proof of the signature or official character of the person appearing to have signed the report or certified the document and is, in the

absence of evidence to the contrary, proof of the statements contained in the report or proof of the contents of the document.

(2) No report or document must be received in evidence under this section unless the party intending to produce it has, at least seven days before producing it, served a notice of that intention on the party against whom it is intended to be produced, together with a copy of the report or document.

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

## PART 8

## TRANSITIONAL ARRANGEMENTS AND LIABILITY OF MEMBERSSTAFF AND ACCREDITED REPRESENTATIVES, EXPERTS AND ADVISERS OF AVIATION SAFETY INVESTIGATION BOARD

### Investigations

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

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

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

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

**Amendment of section 71 of Act 13 of 2009**

**10.** Section 71 of the principal Act is hereby substituted for the following section:

"71 A juristic person **[to be]** known as the South African Civil Aviation Authority, established by section 2 of the South African Civil Aviation Authority Act, 1998 (Act No. 40 of 1998) **[comprising of the Civil Aviation Authority Board, the Director and staff of the Civil Aviation Authority, is hereby established]** shall be deemed to have been established by this Act".

**Amendment of section 72 of Act 13 of 2009**

**11.** Section 72 of the principal Act is hereby amended by—

(a) the substitution for paragraphs (a) (b) and (f) of the following paragraphs:

"(a) control and regulate civil aviation safety, **[and]** security and environment;

(b) oversee the implementation of and compliance with the National Aviation Security Program; [**and**]

(f) monitor and ensure compliance with this Act **[and the Convention.]**; and";.

(b) the insertion of the following paragraph after paragraph (f):

"(g) exercise any power or perform any duty conferred or imposed on it under any law.".

**Amendment of section 73 of Act 13 of 2009**

**12.** Section 73 of the principal Act is hereby amended by—

(a) the substitution for subsection (1) of the following subsection:

"(1) The Civil Aviation Authority has the function of conducting the safety, **[and]** security and environment oversight of civil aviation in the Republic by-

(a) developing and promoting appropriate, clear and concise regulatory requirements, and technical aviation safety, **[and]** security and environment standards;

(b) developing effective enforcement strategies to ensure compliance with aviation safety, **[and]** security and environment standards;

(c) issuing approvals, certificates, licences, registrations and permits;

(d) conducting comprehensive aviation industry surveillance, including assessment of safety, **[and]** security and environment related decisions taken by industry management at all levels for their impact on aviation safety, **[and]** security and environment;

(e) overseeing and regulating the flight inspection of navigational aids to aviation;

(f) conducting regular reviews of the system of civil aviation safety, **[and]** security and environment in order to—

(i) monitor the safety, security and environment performance of the aviation industry;

(ii) identify safety, security and environment related trends and risk factors; and

(iii) promote the development and improvement of the system;

**[(g) conducting regular and timely assessment of international safety, and security developments;]**

(h) formulating **[and approving]** supporting regulations and approving technical standards through a consultative process with the aviation industry **[in terms of section 156 of this Act]**;

(i) monitoring, implementing and enforcing the National Aviation Security Programme (NASP);

(j) **[the review and ensurance of]** ensuring the adequacy of security programs and associated documentation produced by **[airport, air service operators, and cargo operations]** aviation participants, monitoring their implementation to ensure continuing effectiveness **[and incorporation of amendments as required]**;

(k) the enhancement of aviation security by the development and dissemination of progressive administrative and technical practices, promoting their use by **[security services, airport administrations and air service operators]** aviation participants;

(l) ensuring**,** the **[formulating]** formulation of **[a national]** aviation **[disaster plan]** emergency plans;

(m) encouraging a greater acceptance by the aviation industry of its obligation to maintain high standards of aviation safety**, [and]** security and environment, through—

(i) comprehensive safety**, [and]** security and environment education and training programs;

(ii) accurate and timely aviation safety**, [and]** security and environment advice; and

(iii) fostering an awareness in industry management, and within the community generally, of the importance of aviation safety**, [and]** security and environment and compliance with relevant legislation; and

(n) promoting communication with all interested parties on aviation safety**, [and]** security and environment issues.";

(b) the substitution for paragraphs (d) and (j) of subsection (2) of the following paragraphs:

"(d) to recommend to the Minister the introduction or amendment of civil aviation safety**, [and]** security and environment legislation;

(j) to promote the development of South Africa's civil aviation safety, **[and]** security and environment capabilities, skills and services for the benefit of the South African community;"; and

(c) the substitution for subsection (4) of the following subsection:

"(4) The functions of the Civil Aviation Authority as contemplated in subsection (1) and (2) must be performed by the **[Director]** Chief Executive Officer and staff **[appointed by the Director]**.".

**Amendment of section 74 of Act 13 2009**

**13.** Section 74 of the principal Act is hereby amended by the substitution for paragraphs (b) and (f) of subsection (1) of the following paragraphs:

"(b) levies or charges on aircraft passengers and participants in civil aviation as prescribed **[by national legislation]**;

(f) any other money received in terms of the South African Civil Aviation Authority Levies Act, 1998 (Act No. 41 of 1998) or any other **[civil aviation]** legislation, including the income derived from the fees contemplated in this Act;".

**Amendment of section 76 of Act 13 2009**

**14.** Section 76 of the principal Act is hereby amended by—

(a) the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) **[To]** to oversee the **[corporate governance]** functions of the Civil Aviation Authority in order to attain the objects of this Act;

(b) the substitution for paragraphs (a) and (d) of subsection (2) of the following paragraphs:

"(a) to determine, oversee and review **[revise]** the corporate governance structures within the Civil Aviation Authority;

(d) to determine the policy for conditions of employment and remuneration, allowances, subsidies and other service benefits of

employees of the Civil Aviation Authority, **[other than the Director**]; and"

(c) the substitution for subsection (4) of the following subsection:

"(4) In the execution of the responsibilities as contemplated in subsection (2) and (3) the Civil Aviation Authority Board may not compromise or obstruct the execution of the safety, **[and]** security and environment oversight functions of the **[Director]** Chief Executive Officer as contemplated in this Act."

**Amendment of section 77 of Act 13 of 2009**

**15.** Section 77 of the principal Act is hereby amended by the substitution for paragraphs (a), (b) and (f) of subsection (1) of the following paragraphs:

"(a) one must be the non-executive chairperson who is appointed for a term not exceeding **[of]** three years and shall on the expiration of such term be eligible for reappointment for one further term only.

(b) one must be, an employee of the Department, and if the Minister specifies an office in the department for the purpose of this subsection, the person for the time being holding that office;";

(f) one must be a person with civil aviation acknowledged technical competencies **[involved in organised labour from the aviation industry].".**

**Amendment of section 82 of Act 13 of 2009**

**16.** Section 82 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"(2) Any appointed member who **[is in the full-time service of the State]** holds any post or office in or under any government entity, administration or department, or in or under any institution or body that is wholly or partially funded by the State, is not, in respect of the duties performed by him or her as a member, [**paid any—]** entitled to any payment".

**[(a) remuneration in addition to his or her remuneration; and**

**(b) allowance in respect of subsistence and travel at a rate higher than that applicable to him or her as such officer.”]**

**Repeal of section 83 of Act 13 of 2009**

**17.** Section 83 of the principal Act is hereby repealed.

**Substitution of section 85 of Act 13 of 2009**

**18.** The following section is hereby substituted for section 85 of the principal Act—

**“Appointment and removal of Chief Executive Officer**

**85.** (1) The Chief Executive Officer shall be appointed by the Minister from the list of at most three names recommended by the Civil Aviation Authority Board.

(2) When appointing the Chief Executive Officer in terms of subsection (1) the Minister must take into account such person’s management and aviation technical knowledge and experience.

(3) The Chief Executive Officer holds his or her office for a period not exceeding five years.

(4) The Chief Executive Officer is appointed on such conditions as may be determined by the Minister, after consideration of the recommendations of the Civil Aviation Authority Board.

(5) The Chief Executive Officer may be reappointed at the expiry of his or her term of office for a further period not exceeding five years.

(6) The Chief Executive Officer holds office on a full-time basis.

(7)The Chief Executive Officer must be a South African citizen who is fit and proper person to hold such office and must obtain a top secret security clearance.

(8) The Chief Executive Officer may not engage in any other paid employment and may not participate in any activity in respect of which he or she

is in any way remunerated or receives any benefits or allowances without prior written approval of the Civil Aviation Authority Board.

(9) The Minister may, at any time, discharge the Chief Executive Officer from office:

(a) if he or she repeatedly fails to perform the duties of office efficiently;

(b) if he or she materially fails to comply with the conditions of performance agreement entered into as contemplated in section 94;

(c) if he or she, due to any physical illness or any other cause becomes incapable of performing the functions of office of the Chief Executive Officer or performs them inefficiently; or

(d) for misconduct.

(10) The Chief Executive Officer vacates office immediately if he or she –

(a) is convicted—

(i) whether in the Republic or elsewhere of murder, robbery, theft, fraud, forgery or uttering a forged document, perjury or any offence involving dishonesty; or

(ii) of any offence in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), the Companies Act, 1973 (Act No. 61 of 1973), Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), the Public Finance Management Act or of contravening this Act;

(b) is convicted of an offence during his or her term of office and sentenced to a period of imprisonment without the option of a fine; or

(c) becomes a political office bearer.

(11) The Civil Aviation Authority Board may suspend the Chief Executive Officer, pending the outcome of an investigation.”.

**Amendment of section 86 of Act 13 of 2009**

**19.** The following section is hereby substituted for section 86 of the principal Act—

**"Duties of Chief Executive Officer**

**86**. (1) The Chief Executive Officer is the head of the Authority's administration and manages the Civil Aviation Authority.

(2) The Chief Executive Officer has the powers and must perform the duties conferred or imposed upon him or her by this Act and such powers and duties that may be assigned to him or her by the Minister.

(3) In the exercise of the powers and performance of duties to this Act, the Chief Executive Officer is accountable—

(a) to the Minister, through the Civil Aviation Authority Board, in respect of issues relating to civil aviation safety, security and environment oversight; and

(b) to the Civil Aviation Authority Board in respect of the implementation of governance policies as directed by the Civil Aviation Authority Board.

(4) The Chief Executive Officer must submit a quarterly report to the Civil Aviation Authority Board on the execution of his or her functions.".

**Substitution of section 90 of Act 13 of 2009**

**20.** The following section is hereby substituted for section 90 of the principal Act:

**"Appointment of acting Chief Executive Officer**

**90.** (1) When the Chief Executive Officer is absent from the Republic or is otherwise unable to fulfil the duties of the Chief Executive Officer he or she must, having regard to section 85(2) appoint a member of the staff of the Civil Aviation Authority to act as Chief Executive Officer.

(2) The period of appointment of an acting Chief Executive Officer in subsection (1) may not exceed 30 days.

(3) The Civil Aviation Authority Board must, in consultation with the Minister, appoint an acting Chief Executive Officer —

(a) during a vacancy in the office of the Chief Executive Officer;

(b) during any period of absence exceeding 30 days; or

(c) for any other reason when the Chief Executive Officer is unable to perform the functions of his or her office.

**Amendment of section 94 of Act 13 of 2009**

**21.** Section 94 of the principal Act is hereby amended by—

(a) the substitution for the heading of section 94 of the following heading:

**"Performance agreement between Minister[,] and Civil Aviation Authority Board [and Director]"**

(b) the substitution for subsection (1) of the following subsection:

"(1) The Minister**[,]** and the Civil Aviation Authority Board **[Director]** must enter into an agreement **[or agreements]** about the performance of the Civil Aviation Authority 's functions in terms of this Act.

(c) the substitution for paragraphs (a) and (b) of subsection (2) of the following paragraphs:

"(a) the Minister's requirements in respect of **[the Civil Aviation Authority Board and]** the Civil Aviation Authority's scope of business, efficiency and financial performance, and achievements of objectives;

(b) the principles to be followed by **[the Civil Aviation Authority Board and]** the Civil Aviation Authority for the purposes of business planning.".

(d) the substitution for subsection (3) of the following subsection:

"(3) The Minister**[,]** and the Civil Aviation Authority Board **[and the Director]** may in writing, amend the performance agreement, when necessary **[from time to time];** and

(e) the deletion of subsections (4),(5) and (6).

**Amendment of section 95 of Act 13 of 2009**

**22.** Section 95 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Public Finance Management Act applies to the Civil Aviation Authority **[Board].".**

**Substitution of section 99 of Act 13 of 2009**

**23.** The following section is hereby substituted for section 99 of the principal Act-

**"Limitation of liability**

**99.** No person, including the State, **[employee of the Civil Aviation Authority]** is in respect of anything done or omitted in good faith in the exercise of a power or the performance of a duty in terms of or by virtue of this Act, or in respect of anything that may result therefrom.".

**Amendment of section 103 of Act 13 of 2009**

**24.** Section 103 of the principal Act is hereby amended by the deletion of paragraphs (m) (n) and (o).

**Amendment of section 104 of Act 13 of 2009**

**25.** Section 104 of the principal Act is hereby amended—

(a) by the substitution paragraphs (a), (b), (g), (h), (m) and (n) of subsection (1) of the following paragraphs:

"(a) the Director-General of the Department, or any person designated by him or her, who shall also be the chairperson of the committee,

and in whose absence a member of the National Aviation Security Committee appointed by the National Aviation Security Committee is to act as chairperson;

(b) an official responsible for national air transport facilitation designated by the **[Minister]** Director-General of the Department;

(g) a person designated by the Chief Executive Officer**[Director]** after consultation with the **[Minister]** Department;

(h) an official designated by the Director-General for an organization responsible for State Security **[National Intelligence]**;

(m) an official designated by the Coordinator of the National Intelligence Coordination Committee;

(n) an official designated by the Director-General of the Department responsible for international relations**[: Foreign Affairs]**;";

(b) by the deletion of paragraph (j) of subsection (1); and

(c) by the substitution for subsection (4) of the following subsection:

"(4) In the process of the establishment and development of the policies as contemplated in section 103, the National Aviation Security Committee must, where any matter which may affect any stakeholder, consult with the relevant stakeholder or stakeholders in the aviation industry.".

**Substitution of section 108 of Act 13 of 2009**

**26.** The following section is hereby substituted for section 108 of the principal Act:

**"Designation of secretariat [staff] of the National Aviation Security Committee**

**108.** The Chief Executive Officer **[Director]** shall designate personnel in the Civil Aviation Authority to assist the National Aviation Security Committee in its work.".

**Amendment of section 110 of Act 13 of 2009**

**27.** Section 110 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

**"Appointment of person for execution of airport security programme"**; and

(b) by the substitution for subsection (1) of the following subsection:

"(1) The Chief Executive Officer **[Minister]** must in consultation with the **[Civil Aviation Authority and with the concurrence of the]** person in charge of a designated airport, approve the appointment of the person responsible for the execution of the security program of such designated airport.".

**Amendment of section 111 of Act 13 of 2009**

**28.** Section 111 of the principal Act is hereby amended by—

(a) the substitution for the heading of the following heading—

**"Aviation participants required to have [national] aviation security program"**; and

(b) the substitution for subsections (1) and (2) of the following subsections:

"(1) The following aviation participants are required to **[have national]** develop and implement aviation security program—

(2) Any aviation participant who fails to comply with subsection (1) or fails to comply with the **[national]** aviation security program instituted in terms of subsection (1) is guilty of an offence and on conviction liable to a fine or imprisonment for a period not exceeding ten years or to both such fine or imprisonment.".

**Amendment of section 112 of Act 13 of 2009**

**29.** The following is hereby substituted for section 112 of the principal Act:

"112. Any person who—

(a) contravenes any provision of this Part except section 111; or

(b) contravenes or fails to comply with any provision of the National Aviation Security Program **[safety plan]** approved by the Minister and whereof the contents have been brought to his or her notice, is guilty of an offence and shall be liable on conviction to a fine **[not exceeding R50 000.00]** or imprisonment for a period not exceeding 10 years or both such fine and imprisonment.".

**Amendment of heading to Chapter 7 of Act 13 of 2009**

**30.** The following heading is hereby substituted for the heading to Chapter 7 of the principal Act:

**"MONITORING AND ENFORCEMENT OF REGULATORY COMPLIANCE BY CIVIL AVIATION AUTHORITY [AND ISSUING OF COMPLIANCE NOTICES]**".

**Repeal of section 114 of Act 13 of 2009**

**31.** Section 114 of the principal Act is hereby repealed.

**Amendment of section 116 of Act 13 of 2009**

**32.** Section 116 of the principal Act is hereby amended by—

(a) the substitution for paragraph (b) of subsection (1) of the following paragraph:

"(b) there is an imminent danger in the aircraft or to persons or property on the ground, such officer or inspector may prohibit the aircraft from being flown or the holder of an aviation certificate, a permit, or an authorisation to exercise the privileges of such aviation certificate, permit or authorisation **[to exercise]** from exercising the privileges of such aviation certificate, permit or authorisation."; and

(b) the deletion of subsection (3).

**Substitution of section 118 of Act 13 of 2009**

**33.** The following section is hereby substituted for section 118 of the principal Act—

**"Appeal against decisions authorised officers, authorised persons [and] or inspectors**

"**118.** (1) Any aggrieved person or entity whose rights have been detrimentally affected as contemplated in section 117(2) may appeal against a decision of an inspector, authorised person to inter alia—

**[(a) refuse such person's or entity application for registration, licence, certificate, approval or authorisation in terms of this Act;**

**(b) issue, subject to any condition or restriction, such person's or entity's, registration, licence, certificate approval or authorisation in terms of this Act;]**

(c) suspend, **[cancel]** or endorse **[or vary]** such person's or entity's registration, licence, certificate, licence, certificate, approval or authorisation in terms of this Act;

**[(d) issue a compliance notice or a refusal to issue a compliance certificate in terms of section 114(1) and (2);]**

(e) ground an aircraft or close an aviation related facility in terms of section 115(1); or

(f) prohibit the exercising or certain privileges of any aviation certificate, permit or authorisation in terms of section 116(1);

(2) An appeal in terms of subsection (1) must be lodged with the Chief Executive Officer **[Director]** within 30 days after the furnishing of reasons for the decisions.

(3) The Chief Executive Officer **[Director]** must with 14 **[three]** days of receiving such appeal in writing confirm, vary or set aside the decision of the authorised officer, authorised person or inspector.

(4) The Chief Executive Officer **[Director]** must within 14 days furnish written reasons to the appellant for any decision taken in terms of subsection (3).

(5) Any person aggrieved by a decision taken in terms of subsection (3) may appeal against such decision within 30 **[five]** days of receipt of the reasons referred to in subsection (3) to an appeal committee contemplated in section 122.

(6) In adjudicating the appeal contemplated in subsection (3) the Chief Executive Officer **[Director]** may afford the appellant—

(a) a reasonable opportunity to make representations;

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

(c) the opportunity to appear in person.

(7) The Chief Executive Officer **[Director]** may on good cause shown condone any non-compliance with the time period contemplated in subsection (2) [(1)].

(8) (a) If the Chief Executive Officer **[Director]** sets aside any decision of an authorised officer, authorised person, or inspector, the fees referred to in section 121 must be refunded to the Appellant.

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

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

**Amendment of section 119 of Act 13 of 2009**

**34.** Section 119 of the principal Act is hereby amended by—

(a) the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) An applicant for, or the holder of any class of medical certificate who feels aggrieved by—

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

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

(iii) any endorsement made by the designated body or institution on his or her medical certificate; **[or]**

(iv) any endorsement made by a designated aviation medical examiner on his or her medical certificate; <u>or</u>

(v) <u>a decision by a designated medical officer to suspend his or her medical certificate,</u>

may appeal against such decision or endorsement to the <u>Chief Executive Officer</u> **[Director]** in the manner and on the payment of the fees prescribed **[by the Minister]".**

(b) the substitution for subsections (4) and (5) of the following subsections:

"(4) After considering an appeal the <u>Chief Executive Officer</u> **[Director]** may**[, in agreement with the medical practitioners,]** confirm or set aside the decision in respect of which the appeal was lodged or give such other decision as the <u>Chief Executive Officer</u> **[Director and]**<u>, in consultation with</u> the medical practitioners may consider equitable.

(5) Any person affected by a decision referred to in subsection (4) may appeal <u>against the decision</u> to any provincial or local division of the High Court having jurisdiction **[against a decision].**"; and

(f) the deletion of subsection (7).

**Amendment of section 120 of Act 13 of 2009**

**35.** Section 120 of the principal Act is hereby amended by—

(a) the substitution for paragraph (b) of subsection (2) of the following paragraph:

"(b) a decision by the Chief Executive Officer **[Director]** to-

(i) refuse such person's or entity's application for **[exemption,]** registration, licence, certificate, approval or authorisation **[or to designate one or more persons as inspectors, authorised officers, or persons in terms of this Act]**;

(ii) issue, subject to any condition or restriction, such person's or entity's **[exemption,]** registration, licence, certificate, approval or authorization in terms of this Act; or

(iii) suspend, cancel, endorse or vary such person's **[exemption,]** registration, licence, certificate, approval or authorization in terms of this Act;";

(d) the deletion of paragraph (c) and (f)of subsection (2); and

(e) the substitution for subsection (3) of the following subsection:

"(3) The Chief Executive officer **[Director]** must within 14 days furnish written reasons to the appellant for any decision take in terms of subsection (2) (a) to (e)**[(f)]**.".

**Amendment of section 121 of Act 13 of 2009**

**36.** Section 121 of the principal Act is hereby amended by the substitution for the heading of the following heading:

**"Submission of appeal [to appeal committees]".**

**Amendment of section 126 of Act 13 of 2009**

**37.** Section 126 of the principal Act is hereby amended by the substitution for subsection (9) of the following subsection:

"(9) The appellant is entitled to legal representation **[be represented**] at an appeal before the appeal committee **[by an advocate or attorney].".**

**Amendment of section 128 of Act 13 of 2009**

**38.** The following section is hereby substituted for section 128 of the principal Act:

"**Administrative work of appeal committees**

**128.** The administrative work of the appeal committees must be performed by employees of the **[Civil Aviation Authority]** Department.".

**Amendment of Chapter 9 of Act 13 of 2009**

**39.** Chapter 9 of the principal Act is hereby amended by the substitution for the heading of the following heading:

**"PROCEDURES FOR IDENTIFYING AND NOTIFYING OF DIFFERENCES, ISSUANCES OF EXEMPTIONS [BY DIRECTOR] AND RECEPTION ORDERS"**

**Amendment of section 130 of Act 13 of 2009**

**40.** The following section is hereby substituted for section 130 of the principal Act:

"**Issuance of exemptions by [Director] Minister**

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

(2) In exempting a person or body contemplated in subsection (1) the **[Director]** Minister must have regard to—

(a) the reasons for the required exemption;

(b) any serious and imminent risk to air safety or security;

(c) the existence of an alternative means of compliance **[equivalent level of safety];**

(d) the imminent danger to persons or property if the person or body is exempted; and

(e) any information at his or her disposal.

(3) The **[Director]** Minister may not grant any exemption under subsection (1) for a period longer than 180 days, which period the **[Director]** Minister may on application in writing extend for a further period not exceeding 180 days.

(4) The procedure for the application for the issuance of exemption certificates or any extension by the **[Director]** Minister is as prescribed.".

**Amendment of section 132 of Act 13 of 2009**

**41**. Section 132 of the principal Act is hereby amended by the substitution for subsection (3) for the following subsection:

"(3) The transfer contemplated in subsection (1) shall not have effect in respect of other Contracting States before either the agreement between States in which it is embodied has been registered with **[the Council of the International Civil Aviation Organisation]** the International Civil Aviation Organization (ICAO) **[and made public pursuant to Article 83*bis* of the Convention or the existence and scope of the agreement have been directly communicated to the authorities of other Contracting State or States concerned by a State party to the agreement]**.".

**Amendment of section 133 of Act 13 of 2009**

**42.** The following section is hereby substituted for section 133 of the principal Act:

**"Offences and penalties**

**133.** **(1)** A person who—

*(a)* on board any aircraft—

(i) by force or threat of force or by any other form of intimidation and without lawful reason seizes, or exercises control of, that aircraft;

(ii) commits an act of violence, including an assault or threat, whether of a physical or verbal nature, against any person, including a crew member, which is likely to endanger the safety of that aircraft; or

(iii) wilfully interferes with any member of the crew of that aircraft in the performance of his or her duties;

*(b)* wilfully destroys an aircraft in service or wilfully causes damage to such an aircraft, which renders it incapable of flight or causes damage to it, which is likely to endanger its safety;

*(c)* wilfully places on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft or to cause damage to it, render it incapable of flight or endanger its safety;

*(d)* wilfully destroys or wilfully damages air navigation facilities or wilfully interferes with their operation, which interference is likely to endanger the safety of aircraft;

*(e)* communicates information which he or she knows to be false, thereby endangering the safety of an aircraft in service;

*(f)* places at or in any airport, heliport or air navigation facility any device or substance which is calculated to endanger, injure or kill any person, or to endanger, damage, destroy, disrupt, render useless or unserviceable or put out of action any property, vehicle, aircraft, building, equipment or air navigation facility or part thereof, thereby endangering safety at such airport, heliport or aviation navigation facility;

*(g)* with the intention to jeopardise the operation of an air carrier, the safety or security of an airport, heliport, aircraft in service, persons or property contaminates any aviation fuel;"

*(h)* commits an act at an airport, which causes or is likely to cause serious injury or death;

*(i)* wilfully destroys or seriously damages the facilities of a designated or licensed airport or aircraft not in service located thereon or disrupts the services of the airport through the use of any device, substance or weapon which endangers or is likely to endanger security at that airport; or

*(j)* wilfully performs any other act which jeopardises or may jeopardise—

(i) the operation of an air carrier;

(ii) the safety of an airport, heliport, aircraft in service or of persons or property at such airport, heliport or of such aircraft,

is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding 30 years or to both such fine and imprisonment.

(2) Any person commits an offence if that person—

*(a)* uses an aircraft in service for the purposes of causing death, serious bodily injury or serious damage to property or the environment;

*(b)* releases or discharges from an aircraft in service—

(i) any weapon of mass destruction as defined in section 1 of the Non-proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993);

(ii) explosives as defined in Explosives Act, 1956 (Act No.26 of 1956);

(iii) radioactive material as defined in section 1 of the Nuclear Energy Act, 1999 (Act No. 46 of 1999), or similar substances in a manner that

causes or is likely to cause death, serious bodily injury or serious damage to property or the environment; or

*(c)* uses against or on board an aircraft in service any weapon of mass destruction, explosive, radioactive material, or similar substances in a manner that causes or is likely to cause death, serious bodily injury or serious damage to property or the environment,".

3) Any person commits an offence if that person unlawfully and intentionally transports, causes to be transported, or facilitates the transportation on board an aircraft, of—

*(a)* any explosive, radioactive or nuclear material knowing that it is intended to be used to cause, or in a threat to cause death or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organization to do or to abstain from doing any act;

*(b)* any weapon of mass destruction, knowing it to be a weapon of mass destruction;

*(c)* any source material, special fissionable material, or equipment or material especially designed or prepared for processing, use or production special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under any safeguards pursuant to a safeguard agreement with the International Atomic Energy Agency; or

*(d)* any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a weapon of mass destruction without lawful authorization and with the knowledge that it will be used for such purposes.

(4) Any person who commits any of the offences in subsections (2) and (3) is on conviction liable to an imprisonment for a minimum period of twenty years without the option of a fine.".

**Amendment of section 140 of Act 13 of 2009**

**43**. Section 140 of the principal Act is hereby amended by—

(a) the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) an authorised person, officer or inspector;";

(b) the substitution for subsection (2) of the following subsection:

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

(c) the substitution for subsection (3) of the following subsection:

"(3) A person to whom, and a person who has a legal interest in any baggage, personal effects, mail, cargo, vehicle or goods in respect of which entry into a restricted area has been refused in terms of subsection 920 , may forthwith request any person in authority over the authorised person, officer or inspector concerned, or the airport manager, to review the refusal of the authorised person, officer or inspector, and such person in authority or the airport manager may confirm the refusal or grant the permission required on such conditions as he or she may consider necessary.".

**Amendment of section 142 of Act 13 of 2009**

**44**. Section 142 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

**"Prohibition of conveyance of conventional arms, drugs, explosives, radioactive material, weapons of mass destruction or animal products in aircraft and interference with aircraft in flight in order to exercise criminal jurisdiction"**

(b) by the substitution for subsection (3) of the following subsection:

"(3) An aircraft which upon reasonable grounds is believed to be engaged in conveying any conventional arms, drugs, explosives, radioactive or nuclear material, weapon of mass destruction or animal product contrary to subsection

**[(1)]** (2), is subject to the provisions of the regulations with regard to the identification and interception of aircraft: Provided that any identification and interception of an aircraft shall take place with due regard to the provisions of Annex 2 **[of]** to the Convention in respect of Marshalling Signals, Interception Manoeuvres and Orders of the Convention on Offences and certain other Acts committed on board Aircraft, 1963, entered into on 14 September 1963 in Tokyo.".

(c) by the insertion of the following words "explosive, radioactive or nuclear material, weapon of mass destruction" between the word "drugs" and the expression "or animal product" in subsections 5(a), 5(b)(i) and 5(b)(ii).

(d) by the substitution for paragraph (a) in subsection (7) of the following paragraph:

"(a) Any conventional arms, drugs, explosive, radioactive or nuclear material, weapon of mass destruction, animal product, aircraft or other thing seized under subsection (5) must be forfeited to the State unless the court finds—

(i) in the case of such conventional arms, drugs, explosive, radioactive or nuclear material, weapon of mass destruction or animal product, that they were not conveyed contrary to **[subsection (5)(b)]** any provision of the Act and were not intended to be used for any unlawful purpose; or

(ii) in the case of such an aircraft or other thing, that it was not used or intended to be used for the commission, or in connection with the commission, of any offence;".

**Amendment of section 143 of Act 13 of 2009**

**45.** Section 143 of the principal Act is hereby amended by—

(a) the substitution for subsections (1) and (2) of the following subsections:

"(1) If the Chief Executive Officer **[Minister],** after consultation with the **[Director]** Minister is of the opinion that any action by any person or any group of persons is of such a nature that the safety or security of any person, aircraft, airport, heliport or aviation facility is being seriously and immediately threatened, he or she or any person designated by persons to counter such action.

(2) An authorised person, authorised officer or inspector may take such steps as he or she considers that an order referred to in subsection (1) is complied with.”.

**Amendment of section 144 of Act 13 of 2009**

**46.** Section 144 of the principal Act is hereby amended by the substitution for subsection (8) of the following subsection:

“(8) If a person fails to pay an administrative penalty within the specified period, the Chief Executive Officer may—

(a) refuse to issue or renew a licence, certificate, approval, registration or rating; or

(b) recover the amount of the administrative penalty from such person by way of civil action in a competent court.”.

**Amendment of section 145 of Act 13 of 2009**

**47**. Section 145 of the principal Act is hereby amended by—

(a) the substitution for subsection (1) of the following subsection:

“(1) An authorised person, authorised officer or inspector may, in the interests of aviation security without a warrant, search any person baggage, vehicles, personal effects, cargo or goods, before or after boarding, disembarking, loading or off-loading the aircraft, as he case may be.”.

(b) the substitution for subsections (5) and (6) of the following subsections:

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

(6) The Minister may direct the manager of any airport, or the manager of any organisation conducting any business at any particular airport, that any person or vehicle or the baggage or personal effects of any person entering any restricted

area at the designated airport, or that any vehicle or cargo which is, or any goods which are, to enter a restricted area at the designated airport, be searched by an authorised person, authorised officer or inspector without a warrant.".

(c) the substitution for subsections (8), (9) (10) and (11) of the following subsections:

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

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

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

(11) An authorised person, authorised officer or inspector may, in writing, order a person who refuses to have his or her cargo, goods, vehicle or article searched, to immediately remove such cargo, goods, vehicle or article from the aerodrome [**airport or heliport, as the case may be]**"; and

(d) the substitution for subsection (15) of the following subsection:

"(15) During any search under this section, only a female authorised officer, inspector or person may search a female person and only and a male authorised officer, inspector or person may search a male person.".

**Amendment of section 146 of Act 13 of 2009**

**48.** Section 146 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) An authorised person, authorised officer or inspector may seize any harmful article found during a search carried out under section 145 or retain such article for safe custody while the person in whose possession or custody or under whose control the article was found, remains on the aircraft or in the restricted area or at or in the aviation facility, as the case may be.".

**Substitution of section 147 of Act 13 of 2009**

**49**. The following section is hereby substituted for section 147 of the principal Act:

**"Powers of arrest of authorised person, authorised officer or inspector**

**147**.(1) An authorised person, authorised officer or inspector may under circumstances where there are no other means of ensuring the presence of a person in court without a warrant arrest any person who has committed or is reasonably suspected to have committed an offence referred to in this Act.

(2) The authorised person, authorised officer or inspector may, in order to effect the arrest, use such force as may in the circumstances be reasonably necessary to overcome resistance or to prevent the person concerned from fleeing, and may call on any person to assist him or her to effect the arrest.".

**Amendment of section 148 of Act 13 of 2009**

**50.** Section 148 of the principal Act is hereby amended by substitution for subsection (1) of the following subsection:

"(1) An authorised person, authorised officer or inspector or an employee with the written authorisation of the airport or heliport manager or the person in control

of the aviation facility, as the case may be, may, if he or she considers it necessary in the interest of security, call upon any person at, in or upon any airport, heliport or air navigation facility to furnish him or he full names and address.”.

**Amendment of section 155 of Act 13 of 2009**

**51.** Section 155 of the principal Act is hereby amended by—

(a) the substitution for paragraph (h) of subsection (1) of the following paragraph:
“(h) the designation of one or more bodies or institutions for the purpose of this Act—

(i) to promote aviation safety or to reduce the risk of aircraft accidents or aircraft incidents; **[and]**

(ii) to advise the Chief Executive Officer **[Director]** on any matter connected with the promotion of aviation safety or the reduction of the risk of aircraft accidents or aircraft incidents;”; and

(iii) to implement and manage a State safety programme in order to achieve an acceptable level of safety in the operation of aircraft;”;

(b) the substitution for paragraph (v) of subsection (1) of the following paragraph:
“(v) national aviation emergency **[disaster]** plans and next-of-kin plans in the event of an aircraft accident;”;

(c) the substitution for paragraph (nn) of subsection (1) of the following paragraph:
“(nn) the fees payable **[to the Civil Aviation Authority]** for the lodging of appeals in terms of Chapter 8; **[and]**”;

(d) the substitution for paragraph (oo) of the following paragraph:
“(oo) generally, any matter which the Minister may consider necessary or expedient to prescribe in order that the objects of this Act or the Convention may be achieved and the generality of this paragraph must not be limited by the preceding paragraphs**[.]**; and

(e) the insertion after paragraph (oo) of subsection (1) of the following paragraphs:

"(pp) the establishment of any advisory committee;

(qq) the establishment, implementation and management of State Safety Programme in order to achieve acceptable level of safety;

(rr) the establishment, implementation and management of the National Air Transport Facilitation Programme; and

(ss) the establishment of the National Air Transport Facilitation Committee."; and

(j) the substitution for subsection (5) of the following subsection:

"(5) A regulation relating to a financial matter, except the amendment of user fees, may only be made **[after]** in consultation with the Minister of Finance.";

**Repeal of sections 156, 157, 158,159,160,161, and 162 of Act 13 of 2009**

**52.** Sections 156, 157, 158,159,160,161, and 162 of the principal Act are hereby repealed.

**Amendment of section 163 of Act 13 of 2009**

**53.** Section 163 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

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

**Amendment of laws**

**54.** The laws mentioned in Schedule 1 are hereby amended to the extent set out in the third column of that schedule.

**Short title and commencement**

**55.** This Act is called the Civil Aviation Amendment Act, 2016, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

## SCHEDULE 1

## LAWS AMENDED

| No. and year of Act | Short title | Extent of amendment |
|---|---|---|
| Act 115 of 1990 | Air Services Licensing Act, 1990 | 1. The amendment of section 1 by –<br><br>*(a)* the substitution for the word "Civil Aviation Act, 2008" of the word "Civil Aviation Act, 2009" wherever it occurs;";<br>*(b)* the deletion of the definition of "Director of Civil Aviation";<br>*(c)* the insertion after the definition of "authorised officer" of the following definition:<br><br>**"Chief Executive Officer"** means the Chief Executive Officer as defined in section 1 of the Civil Aviation Act, 2009;";<br><br>2. The substitution for the words "Director" of the words "Chief Executive Officer" wherever it occurs in the Act. |
| Act 41 of 1998 | South African Civil Aviation Authority Levies Act, 1998 | The amendment of section 1 by the substitution in the definition of "levy" for the words "Civil Aviation Act, 2008" of the words "Civil Aviation Act, 2009". |

| | | |
|---|---|---|
| Act 59 of 1993 | Convention on the International Recognition of Rights in Aircraft Act, 1993 | 1. The amendment of section 1 by –<br><br>*(a)* the substitution for the word "Civil Aviation Act, 2008" of the word "Civil Aviation Act, 2009" wherever it occurs;";<br>*(b)* the deletion of the definition of "Director of Civil Aviation";<br>*(c)* the insertion after the definition of "authorised officer" of the following definition:<br><br>**"Chief Executive Officer"** means the Chief Executive Officer as defined in section 1 of the Civil Aviation Act, 2009;";<br><br>2. The substitution for the words "Director" of the words "Chief Executive Officer" wherever it occurs in the Act. |
| Act 4 of 2007 | Convention on International Interests in Mobile Equipment Act, 2007 | 1. The substitution for section 3 of the following section<br><br>**"3. Designation of entity.—** The **[South African]** Civil Aviation Authority, as defined in section 1 of the **[South African Civil Aviation Authority Act, 1988 (Act No. 40 of 1988),]** <u>Civil Aviation Authority Act, 2009,</u> is hereby designated in accordance with Article 18 (5) of the Convention as the entry point through which the information |

| | | |
|---|---|---|
| | | required for registration may be transmitted to the International Registry.”. |
| Act 60 of 1993 | International Air Services Act, 1993 | 1. The amendment of section 1 by –<br><br>*(a)* the substitution for the word “Civil Aviation Act, 2008” of the word “Civil Aviation Act, 2009” wherever it occurs;”;<br>*(b)* the deletion of the definition of “Director of Civil Aviation”;<br>*(c)* the insertion after the definition of “authorised officer” of the following definition:<br><br>**“Chief Executive Officer”** means the Chief Executive Officer as defined in section 1 of the Civil Aviation Act, 2009;”;<br><br>2. The substitution for the words “Director” of the words “Chief Executive Officer” wherever it occurs in the Act. |

# MEMORANDUM ON THE OBJECTS OF THE CIVIL AVIATION AMENDMENT BILL, 2016

## 1. BACKGROUND AND PURPOSE

1.1 The Civil Aviation Act, 2009 (Act No. 13 of 2009) ("the principal Act"), provides for the establishment of the Aviation Safety Investigation Board, a juristic body vested with the powers to investigate aircraft accidents and incidents in South Africa. The principal Act also establishes the South African Civil Aviation Authority, an authority vested with the powers to promote civil aviation safety and security. The principal Act was enacted in 2009 to consolidate the various pieces of legislation dealing with the regulation of civil aviation which existed at the time. Following the implementation of the principal Act it became evident that certain provisions thereof were hampering the full operation of the Act.

1.2 Most provisions of Chapter 4 of the principal Act were never promulgated due to various reasons, one of which was the practical difficulties in the establishment of the entity, the Aviation Safety Investigation Board ("ASIB"), which is established by the Chapter. As a result of this, the full establishment of the ASIB was never achieved.

## 2. CLAUSE-BY-CLAUSE ANALYSIS OF BILL

### 2.1 Clause 1: General amendment of Act 13 of 2009

Clause 1 amends the principal Act in a general way to change "Director of Civil Aviation" to "Chief Executive Officer". The title "Director" is a phenomenon in the Public Service where there are Directors operating at a managerial level within the Government structural establishments. This title is also not consistent with the titles of other DoT agencies, where they are referred to as CEOs.

### 2.2 Clause 2: Amendment of section 1 of Act 13 of 2009

Clause 2 amends and inserts various definitions. The definition of "helistop" is amended in order to differentiate a helistop from a heliport. A new definition of "safety programme" is inserted as the Bill extends the powers of the Minister to issue regulations relating to the implementation

of a safety programme. The other inserted definitions are intended to clarify terms inserted by the Bill.

**2.3 Clause 3: Amendment of section 2 of Act 13 of 2009**

Section 3 is amended to remove incorrect references. Furthermore, state aircraft (aircraft belonging to the SANDF, SAPS and customs) are precluded from legislation regulating civil aviation. However, such aircraft may be subject to certain civil aviation regulations under certain circumstances. The principal Act was not very clear with regards to those circumstances and this Clause amends such provisions.

**2.4 Clause 4: Amendment of section 3 of Act 13 of 2009**

Clause 4 amends section 3 to remove the obligation imposed on the Minister of Transport to consult the Civil Aviation Authority in the process of ratification of amendments to the Chicago Convention. This is intended to align the Act with section 231 of the Constitution of the Republic of South Africa, 1996.

**2.5 Clause 5: Amendment of section 4 of Act 13 of 2009**

Clause 5 amends section 4 of the Act to delete the provision which requires the designation of the Civil Aviation Authority. This provision is unnecessary as the Civil Aviation Authority derives its powers and functions directly from the Act.

**2.6 Clause 6: Amendment of section 5 of Act 13 of 2009**

Clause 6 amends section 5 of the Act to remove the reference to a Protocol that does not exist.

**2.7 Clause 7: Amendment of section 7 of Act 13 of 2009**

Clause 7 amends section 7 of the Act to remove obsolete references.

**2.8 Clause 8: Amendment of section 8 of Act 13 of 2009**

Clause 8 amends section 8 of the Act to effect textual improvements.

## 2.9 Clause 9: Substitution of Chapter 4 of Act 13 of 2009

Clause 9 substitutes Chapter 4 of the Act so as to redefine the establishment of an aircraft accident and incident investigation authority in compliance with the international obligation that South Africa has as a Contracting State to the Convention on International Civil Aviation, 1944, whilst taking into account the national legislative framework. Following the enactment of Chapter 4 of the Act which establishes ASIB, it transpired that certain provisions thereof, namely, the provisions dealing with the structure of ASIB as well as the conflict of interest of members, posed a hindrance to the appointment of members of the ASIB. The amendment is intended to remove these hindrances.

The provisions which gave the Chairperson of the ASIB the powers to appoint and manage staff are deleted in the attached draft. Another notable amendment in this Part is with regards to the provision dealing with conflict of interests. The existing legislation prohibits the appointment of a person as a member of the ASIB if they or their family is involved in any way in the aviation business. The Amendment on the other hand requires a member of ASIB to recuse themselves when there is a potential conflict of interest. Furthermore, all the provisions dealing with the appointment of staff of the entity are deleted.

The provisions of the existing legislation dealing with the Director of Investigation are deleted and the power to designate accident investigators is vested with the ASIB.

The Bill also provides for the insertion of a provision dealing with appeals against findings of the ASIB in relation to an accident.

## 2.10 Clause 10: Amendment of section 71 of Act 13 of 2009

Clause 10 amends section 71 of the Act to clarify the fact that the Civil Aviation Authority was already in existence when the Act was promulgated in 2009.

**2.11 Clause 11: Amendment of section 72 of Act 13 of 2009**

Clause 11 amends section 72 of the Act to extend the objects of the Civil Aviation Authority to include the environmental regulation, amongst others. The importance of the protection of the environment is increasing and International Civil Aviation Organization has adopted an amendment to one of its Annexes to put emphasis on this.

**2.12 Clause 12: Amendment of section 73 of Act 13 of 2009**

Clause 12 amends section 73 of the Act to clarify the functions of the Civil Aviation Authority. The amendment includes the environmental protection as one of the functions of the Civil Aviation Authority. The amendment further effects certain textual amendments to clarify the role of the Civil Aviation Authority.

**2.13 Clause 13: Amendment of section 74 of Act 13 of 2009**

Clause 13 amends section 74 of the Act to remove incorrect references.

**2.14 Clause 14: Amendment of section 76 of Act 13 of 2009**

Clause 14 amends section 76 of the Act to extend the role of the Civil Aviation Board to cover the oversight of all the functions of the Civil Aviation Authority, instead of limiting it to corporate governance only. The amendment is also intended to effect some textual changes.

**2.15 Clause 15: Amendment of section 77 of Act 13 of 2009**

Clause 15 amends section 77 of the Act to align the provision relating to the period of appointment of the Chairperson to that dealing with the period of appointment of other Board members. The amendment also removes an unnecessary qualification for one of the Board members.

**2.16 Clause 16: Amendment of section 82 of Act 13 of 2009**

Clause 16 amends section 82 of the Act to extend the restriction relating to the remuneration of Board members to persons not only employed by the State, but by other State institutions that are wholly or partially funded by the State.

**2.17 Clause 17: Repeal of section 83 of Act 13 of 2009**

Clause 17 repeals section 83 of the Act. This is intended to bring the Act in line with the Public Finance Management Act, 1999 (Act No. 1 of 1999)("the PFMA"). The Civil Aviation Authority does not fall under the list of public entities that are required by the PFMA to submit a corporate governance plan.

**2.18 Clause 18: Substitution of section 85 of Act 13 of 2009**

Clause 18 substitutes section 85 of the Act so as to amend the process of the appointment of the Chief Executive Officer (Director of Civil Aviation) to include the role of the Civil Aviation Authority Board. The Bill proposes that the Minister appoints a suitable candidate following a recommendation of the Board. The Bill further bestows on the Board, the power to suspend the Chief Executive Officer.

**2.19 Clause 19: Amendment of section 86 of Act 13 of 2009**

Clause 19 effects a consequential amendment to section 86 of the Act so as to include the Board in the oversight reporting of the Chief Executive Officer.

**2.20 Clause 20: Amendment of section 90 of Act 13 of 2009**

Clause 20 amends section 90 of the Act to afford the Civil Aviation Authority Board, the power to appoint an acting Chief Executive Officer. The amendment is also intended to remove the provision which limits the acting period of the Chief Executive Officer to 12 months.

**2.21 Clause 21: Amendment of section 94 of Act 13 of 2009**

Clause 21 amends section 94 of the Act to effect textual amendments and to remove redundant references. The amendment is also intended to remove provisions which have been found unnecessary to implement.

**2.22 Clause 22: Amendment of section 95 of Act 13 of 2009**

Clause 22 amends section 95 of the Act to remove an incorrect reference.

**2.23 Clause 23: Amendment of section 99 of Act 13 of 2009**

Clause 23 amends section 99 of the Act to extend the limitation of liability to the Civil Aviation Authority, rather than limit it to only the employees of the Authority. In contradistinction to section 19 of the repealed South African Civil Aviation Authority Act, the current provision does not protect the interest of SACAA, in instances where the SACAA does something in good faith. This proposed provision is standard and is similar to the one that is contained in other legislation.

**2.24 Clause 24: Amendment of section 103 of Act 13 of 2009**

Clause 24 amends section 103 of the Act to remove the provision conferring certain powers relating to aviation security which have already been bestowed to the Civil Aviation Authority by virtue of section 73 of the Act. The segregation of powers relating to aviation security was highlighted during an ICAO security audit conducted to verify the aviation security functions of the Republic.

**2.25 Clause 25: Amendment of section 104 of Act 13 of 2009**

Clause 25 amends section 104 of the Act to amend obsolete references and to remove the representative of the South African Secret Service from the composition of the National Aviation Security Committee.

**2.26 Clause 26: Amendment of section 108 of Act 13 of 2009**

Clause 26 amends section 108 of the Act to effect a textual improvement.

**2.27 Clause 27: Amendment of section 110 of Act 13 of 2009**

Clause 27 amends section 110 of the Act to designate the Chief Executive Officer as the authority to approve the appointment of a person responsible for the execution of security programmes of an airport. Certain consequential amendment is effected as a result of this designation.

**2.28 Clause 28: Amendment of section 111 of Act 13 of 2009**

Clause 28 amends section 111 of the Act to effect textual amendments and to remove incorrect references.

**2.29 Clause 29: Amendment of section 112 of Act 13 of 2009**

Clause 29 amends section 112 of the Act to remove an incorrect reference and to remove the reference to the amount of the fine. This will allow the amount of the fine to be determined in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991).

**2.30 Clause 30: Amendment of the heading to Chapter 7 of Act 13 of 2009**

Clause 30 amends the heading to Chapter 7 of the Act so as to remove unnecessary reference to compliance notices.

**2.31 Clause 31: Repeal of section 114 of Act 13 of 2009**

Clause 31 repeals section 114 of the Act. The provisions of this section were never implemented in practice and when considered in light of the existing practice, they are impractical in some respects, especially when they indicate that non-compliances constitute an offence, implying that the criminal process must be invoked.

**2.32 Clause 32: Amendment of section 116 of Act 13 of 2009**

Clause 32 amends section 116 of the Act to clarify the powers of inspectors with regards to prohibition of certain activities. The restriction relating to the time period within which a prohibition may be issued is impractical as a prohibition may be as long as the event which caused it still exists.

**2.33 Clause 33: Amendment of section 118 of Act 13 of 2009**

Clause 33 amends section 118 of the Act to clarify the powers of authorised officers, inspectors or authorised persons. Most of the powers which are listed in the existing provision as appealable against, are not bestowed to the authorised officers etc. these powers are conferred on the Director of Civil Aviation. The amendment further extends the time periods within which an appeal is lodged or adjudicated. The existing timeframes in the Act are unrealistic in practice.

**2.34 Clause 34: Amendment of section 119 of Act 13 of 2009**

Clause 34 amends section 119 of the Act to effect clarity to the process of medical appeals. In the absence of a designated body or institution, certain powers, e.g. the power to suspend a medical certificate due to non-compliance with certain regulations, vest in the Chief Executive Officer and by extension, to the SACAA medical officers designated by the CEO. The appealable decisions that are currently mentioned in section 119 do not include these medical officers, and the amendment is intended to close the loophole. Furthermore, section 119(7) is deleted as it sounds rather odd that an appellant in the medical case is entitled to legal representation when there are no similar provisions for other appellants. The issue of legal representation in administrative matters is dealt with in the Promotion of Administrative Justice Act, and it should be left that way.

**2.35 Clause 35: Amendment of section 120 of Act 13 of 2009**

Clause 35 amends section 120 of the Act to remove from appealable decisions, those decisions which relate to priviledges granted at the discretion of the Chief Executive Officer.

**2.36 Clause 36: Amendment of section 121 of Act 13 of 2009**

Clause 36 amends section 121of the Act to remove unnecessary text.

**2.37 Clause 37: Amendment of section 126 of Act 13 of 2009**

Clause 37 amends section 126 of the Act to effect textual changes.

**2.38 Clause 38: Amendment of section 128 of Act 13 of 2009**

Clause 38 amends section 128 of the Act to move the administrative work of the appeal committee from the Civil Aviation Authority to DOT.

**2.39 Clause 39: Amendment of heading to Chapter 9 of Act 13 of 2009**

Clause 39 amends the heading to Chapter 9 of the Act so as to to remove unnecessary text.

**2.40 Clause 40: Amendment of section 130 of Act 13 of 2009**

Clause 40 amends section 130 of the Act to rectify the assignment of the power to issue exemptions from compliance with the Act. This amendment is intended to remove an inadvertent implication in which the Chief Executive Officer may exempt him or herself from complying with certain requirements prescribed in the Act.

**2.41 Clause 41: Amendment of section 132 of Act 13 of 2009**

Clause 41 amends section 132 of the Act to remove an unnecessary provision. Article 83*bis* of the Chicago Convention already prescribes the process followed once an agreement is signed.

**2.42 Clause 42: Amendment of section 133 of Act 13 of 2009**

Clause 42 amends section 133 of the Act to insert new offences relating to the use of aircraft in service as a weapon or a mechanism for discharging weapons or explosives. The bill also criminalizes transportation of prohibited nuclear material.

**2.43 Clause 43: Amendment of section 140 of Act 13 of 2009**

Clause 43 amends section 140 of the Act to make textual enhancement.

**2.44 Clause 44: Amendment of section 142 of Act 13 of 2009**

Clause 44 amends section 142 of the Act to add explosives, radioactive material and weapons of mass destruction on the list on the list of items prohibited from conveyance by civilian aircraft.

**2.45 Clause 45: Amendment of section 143 of Act 13 of 2009**

Clause 45 amends section 143 of the Act to assign the power to avert threat to safety and security, to the Chief Executive Officer. The Chief Executive Officer is considered as appropriately well vested with the opportunity to assess whether any action is likely to jeopardise aviation safety or security.

**2.46 Clause 46: Amendment of section 144 of Act 13 of 2009**

Clause 46 amends section 144 of the Act to extend the powers of the Chief Executive Officer in relation to administrative fines.

**2.47 Clauses 47; 48; 49 and 50: Amendment of section 145 of Act 13 of 2009**

Clauses 47; 48; 49 and 50 amends sections 145; 146; 147 and 148 in order to effect textual amendments.

**2.48 Clause 51: Amendment of section 155 of Act 13 of 2009**

Clause 51 amends section 155 of the Act to extend the regulation making powers of the Minister. This amendment was necessitated by the ICAO requirements for the introduction of State safety programme as well as requirements relating to facilitation as prescribed in Annex 9.

The expression "aviation emergency plans" as proposed in the amendment is of a wider ambit than the existing words as it is not limited to disasters.

**2.49 Clause 52: Repeals sections 156 to 162 of Act 13 of 2009**

Clause 52 repeals the consultative structures from the Act so as to deal with the establishment thereof and ancillary matters related thereto in the Civil Aviation Regulations. Until the enactment of the Act in 2010, the establishment of the consultative structures was dealt with in the Civil Aviation Regulations. The inclusion of the provisions relating to consultative structures in the Act created some anomalies in relation to provisions which are difficult to implement.

**2.50 Clause 53: Amendment of section 163 of Act 13 of 2009**

Clause 53 amends section 163 of the Act to remove an incorrect reference. The power to issue technical standards is vested with the Chief Executive Officer and it is considered prudent that any technical standard adopted pursuant to the international standards be kept at the offices of the Civil Aviation Authority.

**2.51 Clause 54: Amendment of laws**

Clause 54 and the associated schedule amend various laws to align them with the new provisions of the Act.