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Government Notice

OFFICE OF THE PRIME MINISTER

No. 60

1991

**PROMULGATION OF ACT OF
THE NATIONAL ASSEMBLY**

The following Act which has been passed by the National Assembly and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 6 of 1991: Air Services Amendment Act, 1991.

AIR SERVICES AMENDMENT ACT, 1991**EXPLANATORY NOTE:**

_____ Words underlined with solid line indicate insertions proposed.

[] Words in bold type in square brackets indicate omissions proposed.

ACT

To amend the Air Services Act, 1949, so as to adjust its provisions in view of the independence of Namibia; to entrust certain powers in relation to the licensing and control of air carriers and air services to the Transportation Commission of Namibia; to increase certain penalties; to amend the Road Transportation Act, 1977; and to provide for incidental matters.

(Signed by the President on 27 May 1991)

BE IT ENACTED by the National Assembly of the Republic of Namibia, as follows:-

Amendment of section 1 of Act 51 of 1949, as amended by section 1 of Act 6 of 1964.

1. The Air Services Act, 1949 (hereinafter referred to as the principal Act), is hereby amended -

(a) by the substitution for the definition of "commission" of the following definition:

“ ‘commission’ means the [**National Transport Commission**] Transportation Commission of Namibia established by section [**three of the Transport (Co-ordination) Act, 1948**] 2A of the Road Transportation Act, 1977 (Act 74 of 1977)”;

(b) by the substitution for the definition of "international air transport service" of the following definition:

“‘international air transport service’ means an air transport service which passes through the air space over the territory of [**the Republic of South West Africa**] Namibia and at least one other State;”;

- (c) by the insertion after the definition of “licence” of the following definition:

“‘Minister’ means the Minister of Works, Transport and Communication;”;

- (d) by the insertion after the definition of “Minister” of the following definition:

“‘Permanent Secretary’ means the Permanent Secretary: Works, Transport and Communication or a person designated by him or her;”;

- (e) by the deletion of the definition of “person”; and

- (f) by the deletion of the definition of “South West Africa”.

2. Section 2 of the principal Act is hereby amended -

- (a) by the substitution for subsection (3) of the following subsection:

“(3) (a) The [**State President**] Minister may, if it appears to [**him**] the Minister expedient to do so, by [**proclamation**] notice in the *Gazette* exclude or modify, to such extent as to him or her seems desirable, the application of subsection (1) to or in respect of visiting aircraft, registered as to nationality in another contracting State, which are engaged in the carriage of passengers, cargo or mail for remuneration or hire on other than scheduled international air services.

- (b) For the purposes of [**this sub-section**] paragraph (a) “contracting State” means any State which is a party to the Convention on International Civil Aviation, signed at Chicago on the seventh day of December, 1944.”;

Amendment of section 2 of Act 51 of 1949, as amended by section 2 of Act 6 of 1964.

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

“(4) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction, for a first offence, to a fine not exceeding [**five hundred pounds**] R20 000, and for every subsequent offence, to a fine not exceeding [**one thousand pounds**] R50 000.”.

Amendment of section 3 of Act 51 of 1949.

3. Section 3 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“It shall be the function of the commission, subject to the provisions of this Act [**and with due regard to the provisions of sections 7 and 9 of the Transport (Co-ordination) Act, 1948 (Act 44 of 1948)**], to hear and determine any application-”.

Amendment of section 4 of Act 51 of 1949.

4. Section 4 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) proof, to the satisfaction of the commission, of the availability of sufficient capital for financing the enterprise, and a statement of the amount of such capital: Provided that this paragraph shall not apply in respect of an application for a licence by [**the Railway Administration**] Transnamib Limited referred to in section 2 of the National Transport Corporation Act, 1987 (Act 21 of 1987), or a company of which the said Transnamib Limited is the sole shareholder;”.

Amendment of section 7 of Act 51 of 1949.

5. Section 7 of the principal Act is hereby amended -

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

“(3) If the commission is of the opinion, having regard to the nature of an application or objection or the circumstances in which it is made, that it has *prima facie* little chance of success and that its making may cause needless expense to an objector or to the applicant, as the

case may be, the commission may at any time during the proceedings after the lodging of an application or objection, order such applicant or objector to deposit with the commission a sum not exceeding [**one hundred pounds**] R4 000 within a stated time, and in default of such deposit may refuse the application or disallow the objection.”; and

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

“(4) The commission may, as a condition of condonation of any default by an applicant or objector in complying with the prescribed procedure of application or objection, or of the grant of postponement or other indulgence, require such applicant, objector or party seeking indulgence to deposit with the commission a sum not exceeding [**one hundred pounds**] R4 000 within a stated time.”.

Amendment of section 8
of Act 51 of 1949.

6. Section 8 of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) Any person convicted of an offence under this section shall be liable to a fine not exceeding [**one hundred pounds**] R4 000.”.

Amendment of section 11
of Act 51 of 1949.

7. Section 11 of the principal Act is hereby amended by the substitution for paragraph (e) of subsection (3) of the following paragraph:

“(e) conditions as to the provision which shall be made by the air carrier for the payment of compensation in respect of the disablement or death of any of his employees resulting from any accident arising out of and in the course of such employee’s employment, in any case where the provisions of the [**law relating to the payment of compensation to workmen, in force in the Republic or the territory of South West Africa,**] Workmen’s Compensation Act, 1941 (Act 30 of 1941) do not apply in respect of the disablement or death of such employee;

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Amendment of section 13 of Act 51 of 1949, as amended by section 4 of Act 6 of 1964.

8. Section 13 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) An air carrier to whom a licence for the provision of an air service has been granted, shall not commence such service and an air carrier whose licence for the provision of such a service has been renewed shall not continue such service until the **[commission] Director: Civil Aviation referred to in section 5 of the Civil Aviation Act, 1962 (Act 74 of 1962)** has issued to **[him]** such air carrier an operating certificate certifying that the holder is adequately equipped and able to conduct a safe air service over the route or within the area in respect of which the licence was granted.”.

Substitution of section 16 of Act 51 of 1949.

9. The following section is hereby substituted for section 16 of the principal Act:

“Insurance

16. Every licenced air carrier **[(other than the Railway Administration)]** shall insure and at all times **[keep himself] remain** insured, in such sums or to such extent as may be prescribed in relation to the class of air service provided by such air carrier, against claims of a nature or class likewise so prescribed, which may arise out of the use of aircraft by such air carrier under the authority conveyed by his licence.”.

Amendment of section 17 of Act 51 of 1949, as amended by section 5 of Act 6 of 1964.

10. Section 17 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) For the purposes of subsections (1) and (4) the expression “controlling interest”, in relation to a company, means any interest held in that company by another company by virtue of which such other company is, in relation to the first-mentioned company, a holding company **[within the meaning of section ninety nov of the Companies Act, 1926 (Act No. 46 of 1926),]** as defined in section 1 of the Companies Act, 1973 (Act 61 of 1973), and includes any like interest held in any company by a natural person.

Amendment of section 19
of Act 51 of 1949.

11. Section 19 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) Any person who uses an aircraft for the provision of an air service in contravention of the terms of an exemption granted to [him] such person under this section shall be guilty of an offence and liable on conviction to a fine not exceeding [five hundred pounds] R20 000.”.

Substitution of section 20
of Act 51 of 1949.

12. The following section is hereby substituted for section 20 of the principal Act.

“Provision
with regard to
existing licences

20. (1) Subject to the provisions of subsections (2) and (3) any licence to provide an air transport service granted under this Act before the amendment thereof by the Air Services Amendment Act, 1991, shall be deemed to have been granted by the commission in accordance with the provision of the Act as so amended.

(2) Every licence referred to in subsection (1) shall remain in force for the period specified in the licence, but nothing in that subsection contained shall curtail the power of the commission under this Act to cancel or suspend or otherwise deal with such a licence.

(3) If, in any licence referred to in subsection (1), a period has been specified within which the licensee was required to commence the operation of the air service authorized by the licence, and such period has, at the date of commencement of the Air Services Amendment Act, 1991, not yet expired, it shall not be competent for the commission, during the currency of such period, to grant to any other person a licence for a similar class of service within substantially the same area or over substantially the same route as that in respect of which such first-mentioned licence was granted.”.

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Amendment of section 22 of Act 51 of 1949, as amended by section 6 of Act 6 of 1964.

13. Section 22 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“The Minister [**of Transport**] may make regulations not inconsistent with this Act, with regard to -”.

Substitution of section 24 of Act 51 of 1949, as amended by section 7 of Act 6 of 1964.

14. The following section is hereby substituted for section 24 of the principal Act:

“Jurisdiction of magistrate’s courts.

24. Notwithstanding anything to the contrary in any law contained, any magistrate’s court shall have jurisdiction to impose any sentence provided for in this Act.

Substitution of certain words in Act 51 of 1949.

15. The principal Act is hereby amended -

- (a) by the substitution for the words “the Republic”, wherever they occur, of the word “Namibia”;
- (b) by the substitution for the words “Secretary for Transport”, wherever they occur, of the words “Permanent Secretary”; and
- (c) by the substitution for the words “Consolidated Revenue Fund”, wherever they occur, of the words “State Revenue Fund”.

Amendment of section 1 of Act 74 of 1977, as amended by section 1 of Act 16 of 1982, section 1 of Proclamation AG. 33 of 1985, section 59 of Act 21 of 1987 and section 1 of Proclamation AG. 61 of 1989.

16. Section 1 of the Road Transportation Act, 1977 is hereby amended by the substitution for the definition of “commission” of the following definition:

“ ‘commission’ means the [**Road**] Transportation Commission of [**South West Africa established by**] Namibia referred to in section 2A;”.

Amendment of section 2A of Act 74 of 1977, as inserted by section 3 of Proclamation AG. 61 of 1989.

17. (1) Section 2A of the Road Transportation Act, 1977 is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The commission known as the Road Transportation Commission of South West Africa shall with effect from the commencement of the Air Services Amendment Act, 1991 continue to exist under the name Transportation Commission of Namibia.”

(2) The amendment of section 2A of the Road Transportation Act, 1977 by subsection (1) shall not have any effect on the constitution of the commission referred to in the said section 2A as constituted at the commencement of this Act, and any member of the said commission shall continue to hold office until expiry of the period for which he or she was appointed or until he or she vacates office.

Short title.

18. This Act shall be called the Air Services Amendment Act, 1991.
